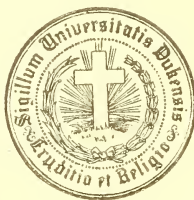


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PROCEEDINGS

AND

DEBATES

OF THE

VIRGINIA STATE CONVENTION,

OF

1829-30.

TO WHICH ARE SUBJOINED,

THE NEW CONSTITUTION OF VIRGINIA,

AND THE

VOTES OF THE PEOPLE.

No free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.—VIRGINIA BILL OF RIGHTS.

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RICHMOND:

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FOR RITCHIE & COOK.

1830.

Eastern District of Virginia, to wit

BE IT REMEMBERED, That on the thirteenth day of August, in the fifty-fifth
***** year of the Independence of the United States of America, RITCHIE &
* L. S. * COOK, of the said District, have deposited in this office, the title of a book,
***** the right whereof they claim as proprietors, in the words following, to wit:

"Proceedings and Debates of the Virginia State Convention, of 1829-30. To which are subjoined the New Constitution of Virginia, and the Votes of the People. No free Government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles. Virginia Bill of Rights."

In conformity to the Act of the Congress of the United States, entitled, "An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies, during the times therein mentioned."

R'D JEFFRIES,
Clerk of the Eastern District of Virginia.

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Gorman
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PREFACE.

It is unnecessary to go into the history of the various attempts, which have been made in Virginia to revise her Constitution. It is enough to say, that after repeated failures in the Legislature, a bill was passed during the session of 1827-28, for taking the sense of the voters on the call of a Convention. In the course of the year 1828, the polls were opened, and the question was carried by 21,896 to 16,646 votes. Immediately a deep interest was spread through the Commonwealth. The people began to cast about for such men as were best qualified to serve them. There was no restriction in their right of selection, either as to the office which was held, or as to the place where the Delegate resided. Each of the twenty-four Senatorial Districts, into which the State had been previously divided, was entitled to four Delegates; and in some cases, the people of one District were induced to look into others for such men, as they thought best fitted to represent them. The consequence of this great excitement was, that an assembly of men was drawn together, which has scarcely ever been surpassed in the United States. Some have even held it to be equal to the celebrated Convention, which met in Virginia in the year 1788, to pass upon the Federal Constitution. Much of what was venerable for years and long service; many of those who were most respected for their wisdom and their eloquence; two of the Ex-Presidents* of the United States; the Chief Justice of the United States; several of those who had been most distinguished in Congress, or the State Legislature, on the Bench or at the Bar, were brought together for the momentous purpose of laying anew the fundamental law of the land.

The scene was truly an interesting one, not only to the State itself, but to the Union. Almost all eyes were fixed upon it. Several distinguished strangers, as well as many of the citizens of the State, were spectators. The great importance of the subject, as well as the high character of the members, diffused an interest over it, which has been very seldom equalled; and it may be truly said, that the reality did not disappoint the public expectation. The Debates were of the most animated sort. The fundamental principles of Government, the elements which should enter into the composition of all its various departments, were discussed at great length, and with much ingenuity. The struggles between the local interests of different parts of the State, were likewise maintained with great spirit and

* It is remarkable, that Mr. Madison was the only survivor of the Convention, which formed the first Constitution of the State, and one of the two surviving members of the Convention, which formed the Constitution of the United States.

perseverance. At length, after a session of three months and a half, and after a contest, which called into play most of the wisdom and eloquence of the House, a Constitution was formed, which was subsequently proposed to the people, and ratified by a vote of 26,055 to 15,563.

The present volume comprises the *Proceedings* and *Debates* of this important Convention. It is as complete a history of them, as can be obtained: Not a resolution, nor *projet*, nor vote, which has been designedly overlooked: Scarcely a Debate, which is not attempted to be sketched. The Publishers, fully aware of the deep interest which these proceedings would excite, not only at the moment of action, but for all future time, were anxious to rescue them, as far as possible, from oblivion; and they accordingly looked around for the best Reporter that could be obtained. The skill of Mr. STANSBURY, of Washington, in reporting the proceedings of Congress, is well known to the citizens of the United States; and the Publishers deem themselves fortunate in having obtained his services, as a Reporter for the Convention. The public may be assured, that they have spared no pains in making their volume as perfect as possible. Many of the Speeches have since been revised by the members, and many of the Debates are now published for the first time. Yet the Publishers cannot be insensible to the imperfections of the work. No Stenographer can take down every thing accurately. No efforts of our own could supply what was defective. Some of the orators had neither the time nor the inclination, nor even the means, of enlarging the sketches of the Stenographer; and we feel it due to some of them, frankly to confess, that we are far from having done justice to some of their Speeches. It is not easy to report the Speeches of such orators as Randolph, and Leigh, and Giles; and if these, or any other gentleman, should think fit to complain, that their arguments have been omitted, or misrepresented, we can only assure them, and the public, that we have done the best within our power. If the volume we now lay before the public be not complete, we are sure at least that it is valuable; and we may be perhaps excused the harmless vanity of expressing our surprise, that instead of not doing *more*, we have done so *much*. Such as it is, it is calculated to assist in interpreting the provisions of the Instrument itself, by shewing the "*fundamental principles*," and the various views to which "*recurrence*" has been had in its formation.

We subjoin to the proceedings of the Convention, a copy of the Constitution which they framed, and the Votes of the people upon it. All which is now respectfully submitted.

RITCHIE & COOK.

Richmond, August, 1830.

PROCEEDINGS AND DEBATES

OF THE

CONVENTION OF VIRGINIA.

MONDAY, OCTOBER 5, 1829.

THE CONVENTION elected for the purpose of revising the Constitution of this State, assembled this day in the Capitol. The attendance was very general, the entire number of Delegates being present with the exception of six persons, detained by indisposition.

At a little after 12 o'clock Mr. Madison rose and addressed the Convention. He stated the propriety of organizing the body by the appointment of a President; and he therefore nominated James Monroe as qualified to fill the Chair; and one whose character and long public services rendered it unnecessary for him to say more than present him respectfully to the notice of the House.

No other candidate being put in nomination, the question was put on the nomination of Mr. Monroe; and he was elected *nem. con.*

Messrs. Madison and Marshall having conducted him to the Chair, he addressed the Convention nearly in the following terms :

Having served my country from very early life, in all its highest trusts and most difficult emergencies, from the most important of which trusts I have lately retired, I cannot otherwise than feel with great sensibility, this proof of the high confidence of this very enlightened and respectable Assembly. It was my earnest hope and desire, that a very distinguished citizen and friend, who has preceded me in several of these high trusts, and who had a just claim to that precedence, should have taken this station, and I deeply regret the considerations which have induced him to decline it. The proofs of his very important services, and the purity of his life, will go down to our latest posterity; and his example, aided by that of others, whom I need not mention, will give a strong prop to our free system of government.

I regret my appointment from another consideration : a fear, that I shall not be able to discharge the duties of the trust, with advantage to my country. I have never before held such a station, and am ignorant of the rules of the House. I have also been afflicted of late, with infirmity, which still exists to a degree, to form a serious obstacle. Being placed, however, here, I will exert my best faculties, physical and mental, such as they are, at every hazard, to discharge its duties to the satisfaction of this Assembly, and of my country.

This assembly is called for the most important object. It is to amend our Constitution, and thereby give a new support to our system of free republican government : our Constitution was the first that was formed in the Union, and it has been in operation since : We had at that period, the examples only of the ancient republics before us ; we have now the experience of more than half a century of this, our own Constitution, and of those of all our sister States. If it has defects, as I think it has, experience will have pointed them out, and the ability and integrity of this enlightened body, will recommend such alterations as it deems proper to our constituents, in whom the power of adopting or rejecting them is exclusively vested.

All other republics have failed. Those of Rome and Greece exist only in History. In the territories which they ruled, we see the ruins of ancient buildings only ; the

Governments have perished, and the inhabitants exhibit a state of decrepitude and wretchedness, which is frightful to those who visit them.

On the subject of order, and the method of proceeding, I need not say any thing to this Assembly. The importance of the call, and the manner of election, give ample assurance that no danger need be apprehended on that subject. Our fellow-citizens, in the elections they have made, have looked to the great cause at issue, and selected those whom they thought most competent to its duties. They have not devoted themselves to individuals, but have regarded principle, and sought to secure it. In this I see strong ground to confide in the stability and success of our system. It inspires me with equal confidence that the result of your labors will correspond with their most sanguine hopes.

Mr. Gordon then moved that the Convention proceed to the election of a Clerk, and nominated Mr. Spottswood Garland of Nelson, as a suitable candidate.

Mr. B. W. Leigh proposed the name of Mr. George W. Munford of this City, late Clerk of the House of Delegates.

Mr. Doddridge, that of Erasmus Stribbling of Augusta.

Mr. Morris, that of Edmund Pendleton of Caroline.

Mr. Green, that of David J. Briggs; and

Mr. Stanard, that of Thomas B. Barton.

These nominations were accompanied with recommendatory remarks, and in some cases with documentary testimony in favor of the respective candidates.

The Convention then proceeded to ballot; and a Committee, consisting of the gentlemen who had nominated the candidates, having been appointed to count the votes, Mr. Gordon of that Committee, reported them as follows:

For Mr. Munford,	38 votes.
“ Stribbling,	18
“ Garland,	6
“ Briggs,	16
“ Barton,	4
“ Pendleton,	4

The entire number of ballots put into the box having been 86, and consequently 44 being requisite to a choice, it appeared that neither of the candidates had been elected.

Mr. Doddridge observed, that according to the rule of the House of Delegates, the lowest on the ballot is dropped on the next ballot.

The result of a second ballot was as follows:

For Mr. Munford,	45 votes.
“ Stribbling,	19
“ Garland,	18
“ Briggs,	6
“ Barton,	1
“ Pendleton,	0

89 ballots were given in, and 45 being necessary to a choice, Mr. George W. Munford was declared to be duly elected, having received that number precisely.

Mr. Doddridge now stated that at a former Convention, the rules of the House of Delegates had been adopted, so far as they would apply, to regulate the proceedings: in conformity with that precedent, he then proposed the following resolution:

Resolved, That the Rules of the late House of Delegates be adopted by this Convention, as rules to govern its proceedings and deliberations, so far as they apply.

The resolution was adopted.

On motion of Mr. McCoy, the Convention then proceeded to elect a Serjeant at Arms.

Mr. Powell nominated as a suitable person for that situation Mr. William Randolph of Frederick county.

Mr. Cabell nominated Col. James Sawyers of Pittsylvania.

Mr. Samuel Taylor proposed Mr. Wade Mosby of Powhatan.

Mr. Garnett nominated Mr. David Meade Randolph.

Mr. Morris nominated Mr. Samuel Jordan Winston; and

Mr. Campbell proposed the name of Peter Francisco.

The ballot being taken, the result was reported by Mr. Powell, from the Committee appointed to examine the ballots, as follows:

For William Randolph,	25 votes.
“ James Sawyers,	14
“ Wade Mosby,	12
“ David M. Randolph,	4
“ Samuel J. Winston,	14
“ Peter Francisco,	17
Scattering,	3

The entire number of ballots having been 89, and 45 requisite for a choice, there was of course, no election by this ballot.

A second trial was equally unsuccessful, the votes standing as follows :

For William Randolph,	39 votes.
“ James Sawyers,	12
“ Wade Mosby,	11
“ David M. Randolph,	0
“ Samuel J. Winston,	11
“ Peter Francisco,	16

A third ballot being taken, the issue was as follows :

For William Randolph,	59 votes.
“ James Sawyers,	15
“ Wade Mosby,	0
“ Samuel J. Winston,	0
“ Peter Francisco,	13
Scattering,	2

So William Randolph was duly elected Serjeant at Arms.

On motion of Mr. Clopton, the following resolution was then adopted :

Resolved, That the Reporters for the Newspapers in the town of Richmond, be admitted to seats for the purpose of taking notes of the proceedings of the Convention.

The Roll of the House was called, and the following was the result :

A LIST OF DELEGATES TO THE CONVENTION.

<i>District of Amelia, Chesterfield, Cumberland, Nottoway, Pouchatan, and Town of Petersburg,</i>	{ John W. Jones, of Chesterfield, Benjamin W. Leigh, of Chesterfield, Samuel Taylor, of Chesterfield, William B. Giles, (Gov.) of Amelia.
<i>District of Brunswick, Dinwiddie, Lunenburg, and Mecklenburg,</i>	{ William H. Brodnax, of Dinwiddie, George C. Dromgoole, of Brunswick, Mark Alexander, of Mecklenburg, William O. Goode, of Mecklenburg.
<i>District of the City of Williamsburg, Charles City, Elizabeth City, James City, City of Richmond, Henrico, New Kent, Warwick, and York,</i>	{ J. Marshall. (C. J. U. S.) of Richmond City, John Tyler, of Charles City, Philip N. Nicholas, of Richmond City, John B. Clopton, of New Kent.
<i>District of Shenandoah and Rockingham,</i>	{ Peachy Harrison, of Rockingham, Jacob Williamson, of Rockingham, William Anderson, of Shenandoah, Samuel Coffinan, of Shenandoah.
<i>District of Augusta, Rockbridge and Pendleton,</i>	{ Briscoe G. Baldwin, of Augusta, Chapman Johnson, of Augusta, William M'Coy, of Pendleton, Samuel M'D. Moore, of Rockbridge.
<i>District of Monroe, Greenbrier, Bath, Botetourt, Alleghany, Pocahontas and Nicholas,</i>	{ Andrew Beirne, of Monroe, William Smith, of Greenbrier, Fleming B. Miller, of Botetourt, John Baxter, of Pocahontas.
<i>District of Sussex, Surry, Southampton, Isle of Wight, Prince George and Greenville,</i>	{ John Y. Mason, of Southampton, James Trezvant, of Southampton, Augustine Claiborne, of Greenville, John Urquhart, of Southampton.
<i>District of Charlotte, Halifax and Prince Edward,</i>	{ John Randolph, of Charlotte, William Leigh, of Halifax, Richard Logan, of Halifax, Richard N. Venable, of Prince Edward.
<i>District of Spottsylvania, Louisa, Orange and Madison,</i>	{ James Madison, (Ex-P.) of Orange, Philip P. Barbour, of Orange, David Watson, of Louisa, Robert Stanard, of Spottsylvania.

- District of Loudoun and Fairfax,* { James Monroe, (Ex-P.) of Loudoun,
Charles F. Mercer, of Loudoun,
William H. Fitzhugh, of Fairfax,
Richard H. Henderson, of Loudoun.
- District of Frederick and Jefferson,* { John R. Cooke, of Frederick,
Alfred H. Powell, of Frederick,
Hierome L. Opie, of Jefferson,
Thomas Griggs, jun. of Jefferson.
- District of Hampshire, Hardy, Berkeley
and Morgan,* { William Naylor, of Hampshire,
William Donaldson, of Hampshire,
Elisha Boyd, of Berkeley,
Philip C. Pendleton, of Berkeley.
- District of Washington, Lee, Scott, Rus-
sell and Tazewell,* { John B. George, of Tazewell,
Andrew M'Millan, of Lee,
Edward Campbell, of Washington,
William Byars, of Washington.
- District of King William, King and
Queen, Essex, Caroline and Hanover,* { John Roane, of King William,
William P. Taylor, of Caroline,
Richard Morris, of Hanover,
James M. Garnett, of Essex.
- District of Wythe, Montgomery, Grayson
and Giles,* { Gordon Cloyd, of Montgomery,
Henley Chapinan, of Giles,
John P. Mathews, of Wythe,
William Oglesby, of Grayson.
- District of Kanawha, Mason, Cabell,
Randolph, Harrison, Lewis, Wood and
Logan,* { Edwin S. Duncan, of Harrison,
John Laidley, of Cabell,
Lewis Summers, of Kanawha,
Adam See, of Randolph.
- District of Ohio, Tyler, Brooke, Monon-
galia and Preston,* { Philip Doddridge, of Brooke,
Charles S. Morgan, of Monongalia,
Alexander Campbell, of Brooke,
Eugenius M. Wilson, of Monongalia.
- District of Fauquier and Culpeper,* { John S. Barbour, of Culpeper,
John Scott, of Fauquier,
John Macrae, of Fauquier,
John W. Green, of Culpeper,
- District of Norfolk, Princess Anne, Nan-
semond and Borough of Norfolk,* { Littleton W. Tazewell, of Norfolk Borough,
Joseph Prentiss, of Nansemond,
Robert B. Taylor, of Norfolk Borough,
George Loyall, of Norfolk Borough.
- District of Campbell, Buckingham and
Bedford,* { William Campbell, of Bedford,
Samuel Claytor, of Campbell,
Callohill Mennis, of Bedford,
James Saunders, of Campbell.
- District of Franklin, Patrick, Henry and
Pittsylvania,* { George Townes, of Pittsylvania,
Benj. W. S. Cabell, of Pittsylvania,
Joseph Martin, of Henry,
Archibald Stuart, jun. of Patrick.
- District of Albemarle, Amherst, Nelson,
Fluvanna and Goochland,* { James Pleasants, of Goochland,
William F. Gordon, of Albemarle,
Lucas P. Thompson, of Amherst,
Thomas Massie, jun. of Nelson.
- District of King George, Westmoreland,
Lancaster, Northumberland, Richmond,
Stafford and Prince William,* { William A. G. Dade, of Prince William,
Ellyson Currie, of Lancaster,
John Taliaferro, of King George,
Fleming Bates, of Northumberland.

District of Matthews, Middlesex, Accomack, Northampton and Gloucester, { Thomas R. Joynes, of Accomack,
Thomas M. Bayly, of Accomack,
Calvin H. Read, of Northampton,
Abel P. Upshur, of Northampton.

All the above members were present, and answered to their names, with the following exceptions :

Absentees—William B. Giles, from the First District ; David Watson, from the Ninth District, who has notified the Executive of his inability to serve ; Callohill Mennis, from the Twentieth District ; William A. G. Dade, from the Twenty-third District, (and who, it is believed, will resign, in consequence of indisposition) ; Ellyson Currie, from the Twenty-third District, dead ; and Calvin H. Read, from the Twenty-fourth District (sick.)

Mr. Doddridge then offered the following resolution :

Resolved, That the Secretary of this Convention, be authorised and required to provide the same with stationery, and that he do also contract for, and superintend all such public printing as shall be ordered by this Convention, on the most beneficial terms for the Commonwealth in his power.

In advocating the adoption of this resolution, Mr. Doddridge observed, that he had been induced to offer it to the Convention, by a desire to avoid the occurrence of any thing like strife or party collisions, so apt to be excited whenever the public printing of deliberative bodies was given by resolution or election to a particular individual. He understood that the public printing of Congress had, for many years, been confided to the management of the Clerk of the House of Representatives, and if he had been rightly informed, it was done as well, and as much to the satisfaction of the members, as it had been since the mode had been changed and a public printer appointed. He feared, if the Convention should proceed to the election of a printer, its members would be thrown into parties, and an unpleasant contest ensue. This he earnestly wished to avoid : he believed the resolution he had had the honour to propose was calculated to avoid it, and he thought it would be acknowledged to be practical, reasonable and fair in its character.

Mr. Nicholas was opposed to the resolution. He most fully agreed with the member, who had proposed it in deprecating the introduction of party spirit and party collisions into this body. But he did not see why such consequences must follow the election of a printer to the Convention, any more than the election of any other officer. He presumed that all the members would vote, in such an election, from the same regard to the public good and the same conviction of the fitness of the candidate proposed, as they would in any other, or as they had in the ballots just taken. He could perceive no necessity whatever of putting out the small amount of printing required by this body to be contracted for. The appointment of a public printer was the standing, permanent usage of this State. There had always been such a printer appointed by her Legislature, as well in the Senate as in the House of Delegates. He could see no motive for a change of that usage in the present case. The public work ought to be done by an officer responsible immediately to the House itself : where was the necessity for any intermediate agency ? He was aware of the very respectable character of the Secretary, with whom the resolution proposed to place this trust, nor was it any objection to that officer which induced him to object to the measure ; but he wished to avoid any subordinate agency as unnecessary and improper. Let the printer be appointed by the House itself : let him be responsible directly to the House which appointed him. As to the stationery, he took it for granted, that had already been furnished by the Clerk of the House of Delegates : if so, he saw no need of any farther provision on that subject. He was, however, uninformed on this point, being now for the first time a member of a deliberative body. Seeing no good end to be accomplished by the resolution which had been presented, he was opposed to its adoption : he hoped the House would reject it, and then proceed to appoint such person to execute its printing, as it should deem most fit and competent to that duty.

Mr. McCoy said, that he also was opposed to the resolution which had been read. He had had some experience on this subject as a member of Congress, and he knew that so long as the public printing of that body had been put out on contract, it had been very badly executed. Constant complaints had arisen, and so greatly had the House of Representatives been dissatisfied, that it had been *driven* to resort to another mode, and had consequently employed a public printer appointed by law. As to the idea thrown out by his friend on the left (Mr. Doddridge) that the election of such an officer must necessarily excite party feeling, he could not for his part very well imagine why the election of a printer should produce this effect any more than the election of a door-keeper. Mr. McCoy said, he did not exactly know what was the practice of the State Legislature on the subject of stationery, as it was now many years since he had held a seat there, but he believed it used formerly to be procured by the Clerk. His experience, however, was of long standing, and he did not know what might be the

present practice in the matter; but he hoped what stationery they needed might be procured in the ordinary way.

Mr. Chapman Johnson said, that as there appeared to be some difference of opinion in relation to the resolution before the House, and its further discussion at this time might delay the full organization of the body, he would move that, for the present, it lie upon the table; and he made that motion accordingly.

Mr. Doddridge expressing his assent, the motion was agreed to *nem. con.*

Mr. Johnson then moved that the Convention proceed to elect two door-keepers; which being agreed to, the following persons were put in nomination: by Mr. Nicholas, Littleberry Allen; by Mr. Pleasants, Ellis Puryear; by Mr. Morris, Anselm Baily and Samuel Ford; by Mr. Tyler, John S. Stubblefield and Henry H. Southall; by Mr. Clopton, Pleasant Pomfrey, Ritchie Ayres, William W. Gray, Julius Martin, Christopher S. Roane, and Thomas Underwood.

The House having ballotted for the appointment of one of its two door-keepers, no choice was made: after a second ballot, Mr. Nicholas, from the Committee appointed to examine the votes, reported that they stood as follows:

For Littleberry Allen,	62
Ellis Puryear,	0
Anselm Baily,	2
Samuel Ford,	0
John S. Stubblefield,	7
Henry H. Southall,	0
Pleasant Pomfrey,	2
Ritchie Ayres,	0
William W. Gray,	12
Julius Martin,	0
Christopher S. Roane,	0
Thomas Underwood,	0
Thomas Davis,	1

So Littleberry Allen was declared duly elected.

Two ballots were also taken for a second door-keeper, on the ballot of which John S. Stubblefield had 20 votes, and William W. Gray, 55; 42 being the requisite majority, William W. Gray was declared to have been duly elected.

Mr. Wilson then offered the following resolution:

Resolved, That the Convention will proceed to-morrow, to the election of a Chaplain.

In introducing this resolution, Mr. Wilson said, that apart from all higher considerations which belong to the subject, he thought that a decent respect for themselves, as well as for the opinions and feelings of the community, requires of the members the adoption of a resolution of this kind.

Mr. Powell said, that he was by no means opposed to the object of the resolution just read: very far from it: it had, on the contrary, his most hearty approbation: he was, however, opposed to the mode in which the object was proposed to be attained. He thought a better course would be, to request the President of the Convention to present to the Clergy officiating stately in Richmond, an invitation to serve in rotation as Chaplains to this House. This would obviate all imputation of invidious distinctions as implied in the election of a particular individual. Under this impression, Mr. Powell said he would move that the resolution lie for the present upon the table. He accordingly made the motion, and it was agreed to without opposition.

On motion of Mr. Johnson, the House then adjourned to meet to-morrow at 12 o'clock.

TUESDAY, OCTOBER 6, 1839.

The President took the chair at a little after 12 o'clock.

Mr. William B. Giles, a Delegate from the First, and Mr. Mennis, a Delegate from the Twentieth Senatorial Districts, appeared and took their seats.

Mr. Doddridge of Brooke county, moved to take up the resolution he had yesterday offered on the subject of the public printing, with a view to its withdrawal. Mr. Doddridge said he was induced to take this course by a fear that his resolution, if pressed, might possibly lead to the very evil (the excitement of party spirit) which he had wished to avoid by its presentation.

The motion prevailing, the resolution was accordingly withdrawn.

Mr. Doddridge then submitted the following resolutions, not, he said, with any view to their being taken up at this time, but hoping that they might be permitted to lie on the table, as, probably, other gentlemen might have prepared resolutions on the same subject, more acceptable to the House.

1. *Resolved*, That a Committee be appointed to take into consideration the Bill or Declaration of Rights, and to report to this Convention whether, in their opinion, any, and if any, what amendments are necessary therein.

2. *Resolved*, That a Committee be appointed to take into consideration the Legislative Department of Government as established by the present Constitution, and to report to this Convention, either a substitute for the same, or such amendments thereto, as, in their opinion, are necessary.

3. *Resolved*, That a Committee be appointed to take into consideration the Executive Department of Government as established by the present Constitution, and to report to this Convention either a substitute for the same, or such amendments thereto, as, in their opinion, are necessary.

4. *Resolved*, That a Committee be appointed to take into consideration, the Judicial Department of Government established by the present Constitution, and to report to this Convention either a substitute for the same, or such amendments thereto, as, in their opinion, are necessary.

5. *Resolved*, That a Committee be appointed to take into consideration so much of the Constitution as relates to the Right of Suffrage and qualifications of persons to be elected, and to enquire whether any, and if any, what alterations or amendments are necessary therein, and report the same with their opinions thereon, to this Convention.

6. *Resolved*, That a Committee be appointed to take into consideration the proper basis of representation, and the proper mode of apportioning representation among the people, and to make report thereon to this Convention.

7. *Resolved*. That a Committee be appointed to take into consideration all such parts of the Constitution as are not referred by the foregoing resolutions, and to report to this Convention either substitutes for such parts or such amendments thereto, as, in their opinion, are necessary.

8. *Resolved*, That each Committee appointed under the foregoing resolutions, shall consist of _____ members.

On motion of Mr. Doddridge, these resolutions were accordingly laid upon the table.

Mr. Mercer moved that they be printed ; but

Mr. M'Coy objected to this order being passed as premature, until a printer should be appointed ; and, in order that the House might have such officer, he moved to lay the motion of Mr. Mercer, for the present upon the table, and that the Convention do now proceed to the election of a printer. The motion prevailed : whereupon

Mr. M'Coy nominated Mr. Thomas Ritchie as a suitable person, and accompanied the nomination by a few brief remarks in its support.

Mr. Clopton then nominated Mr. John H. Pleasants, in whose favour he said a few words.

Mr. Garnett added to these nominations the name of Mr. Thomas W. White, to whose competence he briefly bore witness.

The House then proceeded to ballot ; when Mr. M'Coy from the Committee appointed to examine the ballots, reported that 59 votes had been given, and consequently 45 were necessary to a choice : that

Thomas Ritchie had received,	54 votes.
John H. Pleasants,	23
Thomas W. White,	7

Whereupon, Thomas Ritchie was declared to have been duly elected printer to the Convention.

Mr. Wilson now asked permission to withdraw the resolution he had yesterday offered on the subject of appointing a Chaplain ; and having obtained it, he offered the following as a substitute, viz

Resolved, That the Secretary be directed to wait on the Clergy of this city, and request them by an arrangement between themselves, to open the session of the Convention each morning by prayer ; and the question having been put on its adoption, Mr. Powell demanded that it be taken by yeas and nays ; but having failed to make this demand in time, the question was taken in the usual mode, and the resolution adopted ; 50 members rising in the affirmative.

Mr. M'Coy now moved that the series of resolutions previously offered by Mr. Doddridge and now lying on the table, be printed.

Mr. Johnson said he had not the least objection to the printing of the resolutions ; but he had a proposition which he wished previously to offer to the House, and which, if adopted, might perhaps render that order unnecessary : He would state it for the consideration of gentlemen, and the mover of the order to print might determine whether it would not be best to withdraw that motion for the present. What he wished to ask, was, that a Committee might be appointed to report upon the best course to be pursued in relation to the subjects embraced in the resolutions which it was proposed to print. If such a Committee should be raised, the resolutions would, as of course, be referred to it for consideration, and this would supersede the necessity of printing for the consideration of the House.

Mr. J. said he should not at this time present the reasons which had induced him to suggest this course of proceeding, but would try the sense of the Convention upon his resolution, if the pending resolution to print should be withdrawn.

Mr. Doddridge expressed his hope that this would be done, as he approved of the object which seemed to be the aim of the gentleman's proposition.

Mr. McCoy said, he would very cheerfully withdraw his motion, having made it under a sense of obligation, in courtesy to do so, as he had caused its postponement when made by another.

The motion to print was thereupon withdrawn, and

Mr. Johnson offered his resolution in the following form :

Resolved, That a Committee of seven be appointed to enquire and report what method will be most expedient in bringing before the House amendments to the Constitution which may be preferred.

Mr. J. said that he offered this resolution in conformity to a precedent set in the Convention held in the State of New York, where such a proposition had been presented and received with favour. He was well satisfied that the opinions of the members of this body as to many of the subjects embraced in the series of resolutions on the table, were very variant, and that there must be much difficulty in deciding on the proper course to be adopted. The resolution he had offered presented itself to him as being the best expedient which could be resorted to.

Mr. Powell suggested a modification of the resolution by changing the number of the Committee from seven (as originally proposed) to thirteen; to which modification the mover readily assented.

Mr. Mercer thereupon suggested that the resolution be farther modified by enlarging the number of the Committee, so as to embrace one member from each Senatorial District. This he thought would be a ready and the best mode of gathering the sense of the whole body. The trust committed to the Convention was an important one; the enlargement of the Committee would not be great, and each delegation would then be heard on the arrangement of the course of proceeding.

Mr. Johnson said he had no particular partiality to either of the numbers which had been proposed; his main anxiety had been that such a Committee should be raised; and if the enlargement last proposed met the sense of the House, he was content. He therefore adopted the modification suggested by Mr. Mercer, and the resolution was then agreed to, without opposition.

The President then rose and addressing the Convention, said that he had to express a wish that the appointment of this and of all subsequent Committees might be made, not by the presiding officer, but by the House itself. Such a course would be much more agreeable to him. He had now been long absent from deliberative assemblies: he had never presided in any. Many of the gentlemen present were, or had been members of the State Legislature, and were much better acquainted with the proper course of doing the business of such a body than he could be expected to be; his health, besides, was delicate, and it would be very gratifying to him if the Convention would consent to relieve him from the charge of making appointments of its Committees.

Mr. Johnson, though very desirous of lessening as far as practicable the burden imposed on the presiding officer, did not see how the wish just expressed would be complied with, unless by a resolution altering, so far, the rules by which the Convention had resolved to be governed. He would cheerfully offer such a resolution, did he not feel persuaded that the duty of appointing would be performed with more facility as well as greater propriety and more to the satisfaction of the Convention, in the mode at present prescribed. They were disused to such a course as was now suggested in any of the public assemblies in the State, and he could not but desire that the established mode should be adhered to.

Mr. Doddridge, taking it for granted that until the resolution now before the House should be disposed of, no farther business would be done, moved an adjournment to the afternoon, in order to give time for the selection of suitable persons to constitute the Committee proposed, but subsequently withdrew the motion.

Whereupon Mr. Macrae offered the following resolution :

Resolved, That a Committee of — members be appointed to consider and report what rules of proceedings of the House of Delegates are applicable as rules of proceedings of this Convention, and what amendments thereof, if any, ought to be made.

In introducing the resolution, Mr. Macrae observed that from a defect of Parliamentary experience, he was unacquainted with the rules of the House of Delegates, which had in part been adopted for the government of the Convention; and unless those rules were to undergo some amendments, he should be obliged to move for their being printed in their present form. But he thought it best to afford the opportunity of their being modified, if necessary.

The resolution was adopted, and the blank, on motion of Mr. Scott, was filled with the word *seven*.

The following gentlemen were thereupon nominated by the President to constitute this Committee, viz :

Messrs. Macrae, Scott, Johnson, Mercer, Leigh of Chesterfield, Barbour of Orange, and Gordon.

On motion of Mr. Scott, a Committee of Privileges and Elections was appointed, and the following gentlemen were named by the President as its members, viz :

Messrs. Scott, Doddridge, Nicholas, Taylor of Norfolk, Taliaferro, Pleasants and Baldwin.

On motion of Mr. M'Coy, the House then adjourned till to-morrow, 12 o'clock.

WEDNESDAY, OCTOBER 7, 1829.

The Convention met pursuant to adjournment, and its sitting was opened with prayer by the Right Rev. R. C. Moore, of the Episcopal Church.

The following Committee of twenty-four members, one from each Senatorial District, was announced as having been appointed by the President, viz :

William B. Giles from the	1st District.
William H. Brodnax	2d do.
John Marshall	3d do.
Peachy Harrison	4th do.
Chapman Johnson	5th do.
Andrew Beirne	6th do.
John Y. Mason	7th do.
John Randolph	8th do.
James Madison	9th do.
Charles F. Mercer	10th do.
Alfred H. Powell	11th do.
William Naylor	12th do.
John B. George	13th do.
John Roane	14th do.
Henley Chapman	15th do.
Lewis Summers	16th do.
Philip Doddridge	17th do.
John W. Green	18th do.
Littleton W. Tazewell	19th do.
William Campbell	20th do.
George Townes	21st do.
James Pleasants	22d do.
John Taliaferro	23d do.
Thomas R. Joynes	24th do.

On motion of Mr. Johnson, the resolutions introduced on the first day of the sitting of the Convention, by Mr. Doddridge, were referred to the above Committee ; when the House adjourned to 12 o'clock to-morrow.

THURSDAY, OCTOBER 8, 1829.

The Convention met at 12 o'clock, which it is understood will be the stated hour of meeting. After prayers by Bishop Moore,

Mr. Madison from the Select Committee, consisting of one member from each of the 24 Senatorial Districts, to whom the duty had been referred of devising the best mode of arranging the business of the Convention, made the following Report :

The Committee of one from each Senatorial District, appointed to enquire into the most convenient mode of proceeding in bringing to the consideration of the Convention, such amendments as may be proposed to the present Constitution, have had the same under consideration, and are of opinion that the most convenient method is to adopt the following resolutions, viz :

1. *Resolved*, That a Committee be appointed to take into consideration the Bill or Declaration of Rights, and to report to this Convention whether in their opinion any, and if any, what amendments are necessary therein.

2. *Resolved*, That a Committee be appointed to take into consideration the Legislative Department of Government, as established by the present Constitution, and to report to this Convention, either a substitute for the same, or such amendments

thereto, as in their opinion are necessary, or that no substitute or amendment is necessary.

3. *Resolved*, That the Executive Department of Government as established by the present Constitution, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary therein.

4. *Resolved*, That the Judicial Department of Government as established by the present Constitution, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary therein.

5. *Resolved*, That all such parts of the present Constitution as are not referred by the foregoing resolutions, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary therein.

6. *Resolved*, That no original resolution offered to the Convention proposing any amendment to the Constitution or Declaration of Rights, be discussed on its merits in the House, till it shall have been referred.

On motion of Mr. Doddridge, the report was laid on the table, and ordered to be printed.

Mr. Tazewell then said, that as he took it for granted that the object in laying the foregoing report on the table and printing it, was that the other members of the Convention who had not been members of the Committee, might have an opportunity of informing themselves of the contents of the report, he presumed it would be agreeable to them also, to be made acquainted with some other propositions which had been moved in the Committee, but rejected; under this persuasion, he would move that the following resolution, which he had himself proposed to the Committee, but which had not received its approbation, should be printed and laid on the table together with the report, viz:

Resolved, That the most expedient method of bringing before the Convention any amendments to the Constitution which may be proposed, will be, to take up the existing Constitution or form of Government of Virginia, with the Declaration of Rights, and regarding them for the purposes of examination and discussion, merely, as a plan proposed and reported by a Select Committee, to refer the same to a Committee of the whole House, there to be examined section after section, and to be dealt with in all other respects as a bill so referred by the House to that Committee usually is.

The motion was agreed to.

Mr. Mercer said, that under impressions similar to those which had just been expressed by the gentleman from Norfolk, (Mr. Tazewell) he would move the printing of the two following resolutions, which he had had the honour to propose in the Committee, and which it was his purpose to make the subject hereafter of a motion in the Convention.

Resolved, That so much of the Constitution as relates to the right of suffrage, be referred to a Committee to consider and report whether any, and if any, what amendments are necessary therein.

Resolved, That so much of the Constitution as relates to the basis of representation, be referred to a Committee to consider and report whether any, and if any, what amendments are necessary therein.

Mr. Brodnax of Dinwiddie, observed that as in any conceivable disposition of the matter to be submitted to the Convention, the existing Constitution of the State, together with the Declaration of Rights, must be the substratum of the whole, it appeared proper that these also should be printed and should be in the hands of every member. The substance of them, it was true, was, he had no doubt, familiar to the minds of all the gentlemen, and the documents themselves might be consulted in the library, but as they would be a perpetual subject of reference in the approaching discussions, it was certainly convenient and proper that they should be printed, together with the report of the Select Committee. He therefore made a motion to that effect, which was agreed to.

Mr. Macrae, from the Committee appointed to revise the rules of the House of Delegates, made a report upon the subject.

After some conversation between Messrs. Green of Culpeper, Powell of Frederick, and Leigh of Chesterfield, it was agreed to take up this report and proceed to act upon it.

The rules reported were thereupon read successively at the Clerk's table, and after some verbal corrections in the 14th and 30th rules, and a modification of the 32d, which went to include members of both Houses of the State Legislature, among the persons privileged with admission to the floor of the Convention:

On motion of Mr. Leigh of Chesterfield, the 7th rule of the House of Delegates, which, as originally reported, forbids a member to vote on all questions in which he has a personal interest, was so amended as to confine this prohibition to questions "touching his own conduct in, and rights and privileges as, a member of this Convention."

Mr. L. considered this alteration as necessary, both as better expressing the true spirit of the rule, and because in the discussions of this Convention, very many questions must of necessity arise, in which every member would have a personal interest of the deepest kind.

Mr. Alexander of Mecklenburg, was desirous farther to amend this rule in that part of it, which forbids a member to vote on any question, unless he was present when the question was put. Mr. A. considered this prohibition as involving a question of grave importance, and as abridging improperly the exercise of a most important right. A difference of opinion might exist and had actually been expressed, as to the construction of the phrase "when the question was put." The understanding of its meaning in the House of Delegates was, that the question is put in the sense of this rule when it is stated from the Chair; but in the House of Representatives of the United States, a different construction prevailed: here the question was understood as being put to each member only, when that member was called upon to vote: then, the question was put *to him*. Mr. A. said, he would put a case to shew that the rule as it stood, might operate great injustice: he had indeed, himself, been subjected to its effects. When the yeas and nays were demanded, the roll is usually called from east to west. The question is put, and each member answers to his name. If a member residing in the west comes in while it is calling, he is precluded from voting, although his name has not yet been called, because the question has been put. So in the House of Representatives, when the yeas and nays are demanded, the names of the members are called in alphabetical order. If a gentleman enters the Hall, whose name happens to stand near the head of the list, he finds that the Clerk has already called it, and he is, of course, precluded from voting, while another gentleman entering at the same moment, but having the good fortune to stand lower on the list, is admitted to a privilege of which his colleague, though not more negligent than himself, and equally early in his attendance, is deprived. As almost every question likely to be presented to this Convention, would be of weighty consideration, Mr. A. considered it as highly important that every member should have a right to vote upon it, provided he should be present before the final decision was announced from the Chair.

Mr. McCoy said that he did not see the hardships which his friend saw in this rule: the practice in the House of Representatives was, that members not in the House when the Speaker puts the question, are not admitted to vote; but when the yeas and nays are taken, the question is considered as put to each man when that man's name is called. When the members were called in alphabetical order, there was some hardship in the result: members whose names begin with A and B were sometimes taken by surprise, but that could not happen under the rule as interpreted in the House of Delegates; but even if some hardship did occur, Mr. McCoy thought it best upon the whole to let the rule stand as tending to compel members to be present at their post. The more the rule was relaxed, the greater would be the negligence of the members.

Mr. Stanard of Spotsylvania, observed that the interpretation of the phrase in the rule had been so definitively fixed by the practice of the House of Delegates, that no sort of difficulty could occur in understanding its meaning. The construction referred to by the gentleman from Mecklenburg, was one which had never prevailed here. No additional chance of voting was enjoyed by any member of the House of Delegates from the fact of his name standing low upon the alphabet. The rules and the practice of that House, as was well known, had their origin in the Parliamentary law of England. By the established usage in the House of Delegates, no question was taken as definitively stated till the alternative had been propounded. If, therefore, a member entered the House after the affirmative votes had been collected, but before the members of the opposite opinion had been called upon to vote, his vote was received. When the yeas and nays were called for, so soon as one member had answered to his name, the question before the House was considered as definitively propounded, and if a gentleman entered the Hall after that time, his vote could not be received. Very great inconvenience must unavoidably ensue, should the Convention depart from this well established rule. He, therefore, earnestly hoped that the amendment would not prevail.

Mr. Alexander having so modified his amendment as to forbid voting only when a member had not been present before the final decision of the question:

The decision was taken on his amendment, and it was rejected by a large majority.

The question was then put on the whole report as amended, and carried *unanimously*.

The rules, as adopted, were as follows:

1. No member shall absent himself from the service of the House without leave, unless he be sick and unable to attend.

2. When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and without advancing from thence, shall, with

due respect, address himself to the President, confining himself strictly to the point in debate, avoiding all indecent and disrespectful language.

3. No member shall speak more than twice in the same debate without leave.

4. A question being once determined, must stand as the judgment of the House, and cannot again be drawn into debate.

5. While the President is reporting, or putting any question, none shall entertain private discourse, read, stand up, walk into or out of the House.

6. No member shall vote on any question touching his own conduct in, or rights and privileges as, a member of this Convention, or in any other case, where he was not present when the question was put by the President or Chairman of any Committee.

7. Every member who shall be in the House when any question is put, shall, on a division, be counted on the one side or the other.

8. Each day, before the House proceeds to any other business, the Secretary shall read the Orders of the Day.

9. The Secretary shall not suffer any records or papers to be taken from the table, or out of his custody, by any member or other person.

10. A majority of the members of the Convention shall be necessary to proceed to business, and every question shall be determined according to the vote of a majority of the members present. Any smaller number shall be sufficient to adjourn, and fifteen to call a House, and send for the absent, and make any order for their censure or discharge.

11. When the House is to rise, every member shall keep his seat until the President passes him.

12. The Journals of the House shall be daily drawn up by the Secretary, and after being examined by the President, be printed, and one copy be delivered to the Secretary, and one to each member without delay.

13. A majority of any Committee shall be a sufficient number to proceed to business.

14. Any person shall be at liberty to sue out an original writ or subpoena in chancery, in order to prevent a bar by the statute of limitations, or to file any bill in equity, to examine witnesses thereupon, for the sole purpose of preserving their testimony against any member of this House, notwithstanding his privilege; provided that the clerk, after having made out and signed such original writ, shall not deliver the same to the party, or to any other, during the continuance of that privilege.

15. Any person summoned to attend this House, or any Committee thereof, as a witness in any matter depending before them, shall be privileged from arrest, during his coming to, attending on, or going from the House or Committee; and no such witness shall be obliged to attend, until the party, at whose request he shall be summoned, do pay, or secure to him, for his attendance and travelling, the same allowance which is made to witnesses attending the General Court.

16. If any person shall tamper with any witness, in respect to his evidence to be given in this House, or any Committee thereof, or directly, or indirectly, endeavor to deter or hinder any person from appearing, or giving evidence, the same is declared to be a high crime, or misdemeanor; and this House will proceed, with the utmost severity, against such offender.

17. No person shall be taken into custody by the Sergeant at Arms, on any complaint of a breach of privilege, until the matter of such complaint shall be examined by the Committee of Privileges and Elections, and reported to the House.

18. The Sergeant's fees shall be as follows, to wit: for taking any person into custody, two dollars; for every day he shall be detained in custody, two dollars; for sending a messenger to take any person into custody by warrant from the President, eight cents per mile for going, and the same for returning, besides ferriages.

19. On a call of the House, the doors shall not be shut against any member, until his name is once enrolled.

20. When any member shall keep his seat two days, after having obtained leave of absence, such leave shall be void.

21. No business shall be introduced, taken up, or considered, after 12 o'clock, until the Orders of the Day shall be disposed of.

22. Any member, on his motion made for that purpose, on being seconded, provided seven of the members present be in favor of the motion, shall have a right to have the ayes and noes taken upon the determination of any question, provided he shall give notice of his intention to call the ayes and noes, before the question be put, and in such case the House shall not divide, or be counted on the question, but the names of the members shall be called over by the Secretary, and the ayes and noes shall be respectively entered on the Journal, and the question shall be decided as a majority of votes shall thereupon appear: provided that after the ayes and noes shall be separately taken, and before they are counted, or entered on the Journal, the Secretary shall read over the names of those who voted in the affirmative, and of those who voted in

the negative ; and any member shall have liberty at such reading to correct any mistake which may have been committed in listing his name, either in the affirmative or negative.

23. The petitioner who contests the election of a member returned to serve in this Convention is entitled to receive his wages only from the day on which such petitioner is declared duly elected.

24. Select Committees shall be composed of some number not less than five nor more than thirteen.

25. It shall be the rule of the House, in all cases of balloting, to fill one vacancy only at a time.

26. The Committee of Privileges and Elections shall report to the House in all cases of privilege or contested election, to them referred, the principles and reasons upon which their resolutions shall be founded.

27. In all cases of balloting for the election of any officer by this Convention, if on the first ballot no person shall have a majority of the whole number, on the second ballot the person who had the smallest number of votes shall not be balloted for; and so on each succeeding ballot till some person shall have a majority of the whole.

28. In all cases wherein a division of the House on any question propounded from the Chair, is rendered necessary, in the opinion of the President, by the equality of sound, or required by the motion of any member, the members voting on the question which occasions such division, shall be required to rise in their places; and if on a general view of the House, a doubt still remain in the President, or any member thereof, on what side the majority is, the members shall be counted standing in their places, either by the President, or by two members of opposite opinions on the question, to be deputed for that purpose by the President.

29. The Committee appointed to examine the ballot-boxes shall count no blanks therein.

30. The documents ordered to be printed by the House shall be printed on paper of the same size of the Journal of this Convention, and a copy shall be bound with each Journal, to be furnished to the members at the end of the session; and it shall be the duty of the printer of the House to print one hundred additional copies of each document ordered to be printed for the above purpose.

31. It shall be the duty of the Committee of Privileges and Elections to examine the certificates of election furnished by the sheriffs, in order to ascertain the members of this Convention duly elected, and to report thereupon.

32. Seats within this House, such as the President shall direct, shall be set apart for the use of the members of the General Assembly and of the Executive, of the Judges of the Superior Courts of this State, and of the United States, and of such other persons as the President may think proper to invite within the bar.

33. It shall be a standing rule of the House that the President be authorised to call any member of the House to occupy the Chair, and exercise the functions of President, until he may resume the Chair; with this proviso, that the power given by this rule shall not be construed to confer on the President a right to place any member in the Chair of the President for a longer period than one day.

On motion of Mr. Doddridge the Journal and other papers before referred to were ordered to be printed in the octavo form.

On motion of Mr. Mercer, it was ordered, that the act of the State Legislature which authorised the organization of this Convention, be added to the papers to be printed, and then the House adjourned.

FRIDAY, OCTOBER 9, 1829.

The Convention met at 12 o'clock, and its sitting was opened with prayer by the Rev. Bishop Moore.

Mr. Scott from the Committee on Privileges and Elections, made the following report:

The Committee of Privileges and Elections have performed the duty assigned them by the rules of the House, and beg leave to report, that they have examined the returns of the sheriffs, and find that the following persons have been duly elected members of this Convention, to wit:

From the District composed of the counties of Amelia, Chesterfield, Cumberland, Notoway, Pohatan, and the town of Petersburg—John W. Jones, Benjamin W. Leigh, Samuel Taylor and William B. Giles.

From the District composed of the counties of Brunswick, Dinwiddie, Lunenburg and Mecklenburg—William H. Brodnax, George C. Dromgoole, Mark Alexander and William O. Goode.

From the District composed of the counties of Charles City, Elizabeth City, James City, Henrico, New Kent, Warwick, York, and the Cities of Richmond and Williamsburg—John Marshall, John Tyler, Philip N. Nicholas and John B. Clepton.

From the District composed of the counties of Shenandoah and Rockingham—William Anderson, Samuel Coffinan, Peachy Harrison and Jacob D. Williamson.

From the District composed of the counties of Augusta, Rockbridge and Pendleton—Briscoe G. Baldwin, Chapman Johnson, William M'Coy and Samuel M'D. Moore.

From the District composed of the counties of Monroe, Greenbrier, Bath, Botetourt, Alleghany, Pocahontas and Nicholas—Andrew Beirne, William Smith, Fleming B. Miller and John Baxter.

From the District composed of the counties of Sussex, Surry, Southampton, Isle of Wight, Prince George and Greenville—John Y. Mason, James Trezvant, Augustine Claiborne and John Urquhart.

• *From the District composed of the counties of Charlotte, Halifax and Prince Edward*—John Randolph, William Leigh, Richard Logan and Richard N. Venable.

From the District composed of the counties of Spotsylvania, Louisa, Orange and Madison—James Madison, Philip P. Barbour, David Watson and Robert Stanard.

From the District composed of the counties of Loudoun and Fairfax—James Monroe, Charles F. Mercer, William H. Fitzhugh and Richard H. Henderson.

From the District composed of the counties of Frederick and Jefferson—John R. Cooke, Alfred H. Powell, Hierome L. Opie and Thomas Griggs, jr.

From the District composed of the counties of Hampshire, Hardy, Berkeley and Morgan—William Naylor, William Donaldson, Elisha Boyd and Philip C. Pendleton.

From the District composed of the counties of Washington, Lee, Scott, Russell and Tazewell—John B. George, Andrew M'Millan, Edward Campbell and William Byars.

From the District composed of the counties of King William, King & Queen, Essex, Caroline and Hanover—John Roane, William P. Taylor, Richard Morris and James M. Garnett.

From the District composed of the counties of Wythe, Montgomery, Grayson and Giles—Gordon Cloyd, Henley Chapman, John P. Mathews and William Oglesby.

From the District composed of the counties of Kanawha, Mason, Cabell, Randolph, Harrison, Lewis, Wood and Logan—Edward S. Duncan, John Laidley, Lewis Summers and Adam See.

From the District composed of the counties of Ohio, Tyler, Brooke, Monongalia and Preston—Charles S. Morgan, Philip Doddridge, Alexander Campbell and Eugenius M. Wilson.

From the District composed of the counties of Fauquier and Culpeper—John S. Barbour, John Scott, John Macrae and John W. Green.

From the District composed of the counties of Norfolk, Princess Anne, Nansemond and the Borough of Norfolk—Littletton W. Tazewell, Joseph Prentis, Robert B. Taylor and George Loyall.

From the District composed of the counties of Campbell, Buckingham and Bedford—William Campbell, Samuel Claytor, Callohill Mennis and James Saunders.

From the District composed of the counties of Franklin, Patrick, Henry and Pittsylvania—George Townes, Benjamin W. S. Cabell, Joseph Martin and Archibald Stuart.

From the District composed of the counties of Albemarle, Amherst, Nelson, Fluvanna and Goochland—James Pleasants, William F. Gordon, Lucas P. Thompson and Thomas Massie, jr.

From the District composed of the counties of King George, Westmoreland, Lancaster, Northumberland, Richmond, Stafford and Prince William—William A. G. Dade, Ellyson Currie, John Taliaferro and Fleming Bates.

From the District composed of the counties of Matthews, Middlesex, Accomack, Northampton and Gloucester—Thomas R. Joynes, Thomas M. Bayly, Calvin H. Read and Abel P. Upshur.

On motion of Mr. Mercer, the report was laid on the table.

On motion of Mr. Fitzhugh of Fairfax, a Committee was appointed to fix the compensation to be allowed to officers of the Convention; whereupon, the following gentlemen were appointed by the Chair, viz: Messrs. Fitzhugh, Loyall, Stanard, Barbour of Orange, and Bayly.

Mr. Doddridge moved that the report of the Committee of twenty-four, should now be taken up for discussion, but expressed his willingness to withdraw the motion, should any member express a wish for farther time to consider it.

No such wish being expressed, the motion was agreed to, and the report taken up accordingly. Previous to its discussion, however,

Mr. Mercer of Loudoun, explained to the House the reasons why he should not offer the resolutions which he had yesterday laid upon the table, and which had been printed together with the report of the Committee. He stated it to be his intention

to offer at a suitable time, the resolution which he had yesterday read in his place, and which had subsequently been laid upon the table; the object and purport of which he now explained. It was to suspend that rule of proceeding which limits the number of members composing Select Committees to thirteen, with a view to move the reference of the first and fifth resolutions reported, to a Select Committee, consisting of one member from each Senatorial District, and then to refer the third, fourth and fifth resolutions to similar Committees. His design in this proposition was to avail himself of all the intelligence of the body in devising and maturing the best course to be pursued in arriving at the objects of its appointment. Should this plan be adopted, its effect would be to bring into employment the whole faculty of the House: the talent, knowledge and wisdom of all the members would thus be brought into requisition, and exerted at one and the same time. Mr. M. said, he had thought it his duty to give this explanation by way of apology for not now offering the resolutions, which at his request had been laid on the table and printed.

Mr. TAZEVELL, of Norfolk Borough, now rose and said that it would be more satisfactory to him, if the scheme to which he was desirous of offering his own resolution as a substitute, was made by its advocates as perfect as they desired it to be, before his substitute was considered: he had no wish to urge his own proposition as a substitute to another, while that other was confessedly in an imperfect form: he desired, on the contrary, that gentlemen would first make their proposition as perfect as they could, and when they had done this, that the House should judge between the scheme thus complete, and that which he presented to it. But, if the gentlemen who had reported the resolutions now before the Convention, were willing to wave this advantage, and leave their plan as it was, he should now proceed to redeem the pledge which he had given to the Convention yesterday, and move as a substitute for the resolutions, reported by the Committee of twenty-four, that which, at his request, had been printed and appended to them.

Mr. Tazewell then offered the following resolution:

Resolved, That the most expedient method of bringing before the Convention any amendments to the Constitution which may be proposed, will be, to take up the existing Constitution or form of Government of Virginia, with the Declaration of Rights, and regarding them for the purposes of examination and discussion, merely, as a plan proposed and reported by a Select Committee, to refer the same to a Committee of the whole House, there to be examined section after section, and to be dealt with in all other respects as a bill so referred by the House to that Committee usually is.

In making this motion, Mr. President, it is but fair, said Mr. T. to preface it by stating to the Convention that the same motion was made by me in the Committee, and rejected by a majority. But, Sir, notwithstanding this, I deem it due to the interest and importance of the subject, as well as to the solicitude of gentlemen who, not having been members of the Committee, have enjoyed no opportunity of recording their opinions in the case, to make this motion, in order that, at least, every member of this body may have the opportunity of expressing here his views and sentiments on the subject.

In examining the two schemes which are now before the Convention, it must at once be perceived by every gentleman, that in neither is there any principle involved. Each of them contemplates only the most convenient mode of conducting the business before us: it is a question merely of expediency and convenience. The simple question to be settled is, by which of two modes proposed, can the task imposed upon us by our constituents be best accomplished. The discussion is, therefore, narrowed down to a comparison of the different degrees of convenience presented by the two propositions. The difference between them lies in this only. By the scheme contained in my resolution, the existing form of Government is to be referred at once to the whole body, acting in Committee of the Whole, and to undergo a detailed examination there. The whole scheme will be before the whole body at the same time. Under such a state of things, every step that we take will be in reality a step in advance: whatever we do will diminish, so far, what remains to be done. But what will be the effect of adopting the scheme reported by the Committee? You dissect the subject submitted to you, and distribute its several parts to distinct and independent Committees. What then will be the condition of the body? If my plan be adopted, we shall, at once, on the spur of the occasion, begin to act. The Constitution will be printed immediately; we shall forthwith commence its revision; we shall make actual progress in our business, this very day, and so *de die in diem*, and the entire examination will very soon be completed. But if you pursue the other course, you cut up the whole subject into five, six or seven parts, and distribute these five, six or seven parts, among five, six or seven separate and distinct Committees; when this is done, what will remain to the body? Nothing, Sir. You have a Committee for what belongs to the Executive Department of the Government; another Committee for what pertains to the Legislative Department; another for what pertains to the Judiciary; and another Committee for what pertains to neither Executive,

Legislative nor Judicial, and then, Sir, what is this body itself to be doing? It must stand with arms folded, until the Committees, or some one Committee, give it something to do. Its faculties all suspended, it must meet only to adjourn; and how long such a state of things shall continue, must depend solely on the diligence of the Committees. But by my plan, the body can act at once; can act to-day, this very day it can begin and make actual progress in the great duties assigned to it by the people.

But, Sir, this is not all that will ensue upon the adoption of the report which has been presented by the Committee. The action of this body must be suspended, not only till some one of the Committees shall report, but till one certain particular Committee shall report. We are to have one Committee on the Bill of Rights; another Committee on the Executive; another on the Legislative; another on the Judiciary Department; another on some part of the plan of Government which is neither Executive, Legislative nor Judicial in its character, (though what that can be, I do not understand; for all writers that I have read, maintain that every function of Government is of necessity, either Executive, Legislative, or Judicial in its character:) thus, Sir, we are to have five Committees in operation all at one and the same time. On which of their reports must this body first act? On that relating to the Executive? No, Sir; on that relating to the Judiciary? No, Sir; on that which relates to neither of the Departments of Government? No, Sir. This body cannot act if all these reports were received, until the Committee on the Legislative Department have brought in its report; for this Department is universally and justly held to be the foundation of the system of all Government. How vain were it to proceed to any other part of the Constitution, till we had first settled that which is the supreme power in the State! How absurd to set about erecting an edifice, and to begin at the top! To attempt to proceed till the Legislative Committee shall have reported, must involve you in contradictions and difficulties at every step! For example; you come to take up the subject of the Judiciary; the very first question must be, how many judges are to be appointed? What shall be their duties? What their compensation? You take up the report of the Executive Committee, and your first enquiry is, what power shall your Governor have? Shall it be concurrent or exclusive? But all these things must depend on the report of the Legislative Committee; the details in the investigations of that Committee, are necessarily great; they must unavoidably consume a great deal of time; but be the delay ever so great, the Convention must wait till that Committee shall have completed its report; till then the whole body must remain on its oars, with nothing to do.

Nor is this all. He is little acquainted with the nature of Government, who does not at once perceive that in distributing its several functions into various Departments, it is utterly impossible to keep them completely distinct from each other; do what you will, like the colours of the rainbow, they will necessarily run into each other, and become more or less blended together. The ingenuity of man, never yet has devised a form of Government, in which the powers of the different Departments, were not more or less confounded. What, then, becomes of the Committees proposed by the report before you? We are to have one on the Executive Department; another on the Legislative; another on the Judiciary; and another on things anomalous. The first question to be settled, will necessarily be, what part of the Constitution is to be referred to this last Committee. If it is not to touch things Legislative, nor things Executive, nor things Judicial, it can, as I conceive, have nothing to do. If it does touch them, or either of them, what happens? You have two distinct independent bodies, acting at the same time upon the same subject; and in all human probability, rendering to this body different and conflicting reports. Sir, it must be so. It cannot be otherwise. Their duties are co-ordinate; their powers the same; and unless they exhibit more of unanimity than has ever yet been witnessed among mankind, they must and will differ from each other. Sir, it is asking too much, to expect that gentlemen so situated, should concur in their reports. What follows? Each of these conflicting reports will be referred to the Committee of the Whole, and then the Convention will have to begin just where I wish them to begin now. Your Executive Committee and your Legislative Committee both, for instance, report in relation to the veto of the Governor. One says he shall have an absolute veto; or a qualified veto. The other that he shall have no veto at all. Both these reports come into the Committee of the Whole; we take up one and decide upon it, and then comes a new report and a new discussion. We have passed on the report of the Legislative Committee, and then comes in the report of the Executive Committee. The first question which will present itself must be a question of order; and thus the Convention will soon find itself involved in the meshes which are of all others, the most unpleasant and perplexing. But suppose you get clear of the question of order; then comes each Committee, urging and defending its own views; and on the next report the same scene must be acted again; and so over and over again, so long as there remains any other Committee to report. Thus the scheme proposed by the Committee, must

necessarily involve a waste of the time of the Convention : the stripping it of all power of action until the Committees shall please to give it something to do : the action of different independent Committees on the same subjects ; the re-examination of discussions already gone through with, and the endless conflict of contradictory opinions, each urged by gentlemen already pledged by their votes in Committee ; each and all of which present insuperable objections to the adoption of such a scheme, while to that which I have had the honour of proposing, none of them apply in whole or in part.

But there exists another objection ; more perhaps in appearance than in fact, but one which I confess, weighs heavily with me. A bare majority of the people of Virginia, the majority was very small indeed, have given their decision in favour of the call of this Convention. A most respectable minority, (less by only a few votes than the majority which called us here,) though they admit the existence of some defects in the existing Constitution ; yet think it " better to bear the ills we have, than fly to others that we know not of." This minority is every way respectable, as much so in character as numbers. And of what is the majority composed ? Of a most mixed and heterogeneous mass, of which I will venture to affirm, that there are not ten men who agree in their objections to the Constitution. Each man has an objection of his own ; all they agree in is, that they are objectors. Well, Sir, when one of the reports of these Committees shall come in, what will be the consequence ? each man will be actuated by his own individual objection, and will of course, struggle for his own opinion. In the mean while, what becomes of the minority of the people ? Is there no necessity of looking at all to their opinions ? To their prejudices ? Yes, Sir, to their false notions, if you please to call them so ? Will a wise statesman ever disregard the opinion of his people ? No, Sir, if he did, he would be no longer wise. Sir, we must have regard, and a respectful regard, to the opinions of the people of Virginia. What is proposed to you, Sir ? Instead of taking up a Constitution to which a portion of that people have been long attached, and considering it section by section, and word by word, that we may cautiously discover and remedy its defects, by one fell swoop you seize at once upon the whole ; tear it limbless, and scatter its various fragments to the winds of Heaven : then you set to work to gather these scattered and dismembered limbs, and you attempt to join and dove-tail them together, and piece them up into some other form. What will be the public impression from such a procedure ? The public will very naturally conclude, that this Convention has determined to destroy at a blow, every vestige of their Old Constitution. This is the notion that must go abroad ; the people will at once believe that you are resolved to explode every thing at a blast, and then to build upon the same, or on a different foundation, a Government, which but few can hope, *will* do as much for the public happiness and prosperity as that you destroy *has* done. Sir, it is due to this affectionate reverence, the people bear to their long-tried form of Government, to deal tenderly with it ; it becomes us to take up this beloved offspring of theirs with every feeling of kind regard, to extol its virtues and to lay our correcting hand upon its vices alone. Thus, I have endeavored to show, that not only the convenience of the body, but the good opinion of the people, whose voice has brought us here, requires the adoption of the scheme I have proposed.

There are other considerations besides these which ought to lead you to the course I advocate ; which ought to warn you to aim no fell and reckless blow at the existing Constitution. Will you dissect, will you dismember the body said to be gangrenous, before you know where the gangrene is ? Will you at once cut into the vitals and separate it limb from limb, under pretence of searching for the unsound part ? By whom was this Government formed ? By a body which, I will say, united as much wisdom as can be found any where ; with as much public virtue as will ever again be assembled. Is this an instrument to be torn to pieces and distributed fragment by fragment to Committees of thirteen men ? Is it not due to such a document, that we shall contemplate the whole of it at once ? That we shall take a view of its parts as sustaining their respective relations to each other and to the whole ? Can we judge of it correctly if you judge of it only by parts ? Is it wise thus to judge of any thing compounded and complex ? Is it not the most ready course to err ? A different course is surely due to the character and the virtues of those who formed the Constitution. And further, Sir, is nothing due to upwards of fifty years experience ? This Constitution has been in operation for fifty-four years : it has borne us safely through peace and through war ; through all the excitement of party contest, as well as the calmness of more tranquil times : And is there in this body a single member, or is there a single one of our constituents, who is able to name one practical evil it has brought upon us ? Can more be said ? A Government, born of wisdom and of virtue, which has been in operation for fifty-four years, and has done no harm. When was there a Government, of which this could be said ? Certainly it is due to such a system, to consider it as *prima facie* good : it is due to it, to give it a close and deliberate examination : it must surely be rash, to cut it at once to pieces ; scatter all its parts : and then see if we cannot make something out of them, that may peradventure do better. It is due to

the feelings of a very large portion of the people of this State, who are attached to the Constitution in all its parts; to the whole and to every part; to refer such a document to all the wisdom which can be commanded for its contemplation; to the collective wisdom of all those whom they have deputed to the task of its revision. But, if the other course shall be pursued, what will be the result? We are to set thirteen men to examine the Legislative part of it; other thirteen to examine the Executive portion of it; other thirteen to examine the Judicial portion of it; and so on; piece by piece, through half a dozen different Committees. It is vain to reply, that all the reports of these various Committees, must come at last to this body; *how* are they to come? They will come with majorities of each respective Committee, enlisted in favor of their own report, and pledged for its support. It must be so. They stand openly pledged to their constituents and to the world. But, if my proposition shall be adopted, no man will be pledged to any thing, till he has the whole ground before him. Send it to Committees, and the majorities will be pledged; they must be: and they will enter this Hall in solid phalanx, each devoted to the maintenance of the work of his own hands. The consequence I need not predict.

Sir, the question before you, is one of mere form. I considered it as of importance to the time, and to the rightful deliberations of this body; and, therefore, thought something ought to be said upon it. I felt it a duty, to explain the nature of the course I wished to see pursued. I have done: and should consider it unwarrantable, to waste more of that time, which it is my aim and my desire to save.

Mr. MERCER rose in reply. He said, that when he at first rose, he had been well aware of the ingenuity and the ability of the gentleman who had just addressed the House, and was not ignorant of the generous feeling from which what he conceived to be the error of that gentleman proceeded. Yet he believed it only necessary to trace the course of the gentleman's own argument, to show him how widely he had departed from the principles with which he set out. That gentleman, said Mr. Mercer, early told us that the two propositions before the Convention involved no principle. Yet, in support of the substitute he has proposed to the resolutions reported by the Committee, he has gone back and traced the origin of the existing Government, and had delivered an eloquent eulogy upon the Constitution; to the greater part of which, my own heart very fully accords. Sir, was this no appeal to principle? The gentleman tells us, that if the course he advocates shall not be pursued, we shall bring into this House in solid phalanx, pledged and opposing majorities from the Committee rooms. Is there no principle in this? Sir, there *are* principles involved in any course we may pursue. How can we, who have thought that there are defects, and very serious ones in the Constitution, reconcile it to ourselves to be told that the course we have proposed, tears the Constitution to pieces? The honourable member from Norfolk, has treated the Constitution as if it were an organized sensitive being, and its reference to Committees, must necessarily tear it piece-meal and destroy it altogether.

I say, Sir, we purpose to treat the Committee with more respect. What is our proposition? It is first to see whether there be in this body a majority who do disapprove of its present form: and this before we submit it to the promiscuous and accidental motions (if the expression may be pardoned me) of every gentleman who chooses to attack it. We desire first to submit it to Committees of twenty-four members, who, coming from every Senatorial district, may be fairly presumed to represent the judgment of the whole State: and then, after we ascertain that a majority in such Committee of twenty-four concur in recommending an alteration in any of its features, to submit that proposed alteration to the deliberate action of the whole body. Sir, is this to treat the Constitution with levity? Is this tearing it asunder, and scattering its fragments to the winds of Heaven? Is this inconsistent with the tenderest and the deepest reverence for the work of our forefathers? No, Sir: Nothing like it: just the reverse. On the contrary, it is an expedient calculated to save the time of this assembly, and to promote the harmony as well as the speed of its decisions. Mr. President, even forms necessarily involve principles. If, however, our plan saved no time, the argument of the gentleman over the way would have more weight: but it does save time. How can it be otherwise? Surely it must be obvious that if every proposition before it be discussed, must be approved by a majority of a large Committee, we shall have the fewer propositions before us. It is most palpable that such an arrangement must save our time.

But the gentleman has said, that we cannot analyse the Constitution, so as properly to consider it by separate Committees. The honourable member very truly said, that all Governments are capable of being resolved into Executive, Legislative and Judicial Departments. Admit it. Yet, at another time, he says that these Departments melt like the colours of the rainbow into each other. The gentleman certainly reflects upon the authors of the report before you, when he says that the last Committee which they propose will have nothing to act upon. Sir, are there not many subjects, which standing in precisely the same relation to each one of the Departments, and having nothing in their nature to attach them to one more than the other, will very naturally be thrown

out by each of the other Committees as not being appropriate to the subject of their examination? What is to be done with these? If the report be adopted, they will go to this last Committee, of which the gentleman speaks as if they must be idle. There are, for example, some principles laid down in the Bill of Rights, which pertain alike to all the Departments of Government; take as an instance that clause in the Bill of Rights which treats of rights not surrendered: the proposition there laid down belongs equally to all the divisions of Government; they are all alike bound to respect the residuary rights of the people.

But, Sir, let us leave theory for a moment, and look to the practical difficulties before us. What seems very imperfect in theory, is often found to be attended with no evil consequences, when reduced to practice, and submitted to the test of experience. The gentleman's theory is, that you cannot, in the nature of things, form a plan of Government, by the action of these independent Committees. But the simple remedy to this very formidable difficulty, is to let the Convention act upon the reports as they are received, or in the order in which they are taken up. This will prevent all collision of Committee majorities, and obviate the difficulty arising from contradictory reports, (if they shall prove contradictory.) For example: A report is received from the Committee on the Executive: the Convention takes it up and acts upon it, adopting or rejecting its provisions; that report recommends a certain course respecting the veto of the Executive. By and bye comes the report of the Legislative Committee, and recommends a different course respecting the veto; but this recommendation comes too late: the Convention has decided on the subject of the veto, and that subject is at rest; none can stir it anew. Here is an end to the gentleman's difficulty. The Convention loses no time: if any time is lost, it is that of the Committee which discussed a subject already anticipated. Why should the Convention decide upon it again? Has the Convention changed its judgment? It is to be presumed it has not. But granting that it has, all that is to be done, is to suspend the rule *quod hoc*, and open the subject for revision just as might be done in any other case. Nothing here is either gained or lost.

As to the period at which we must commence our discussions, the honorable gentleman from Norfolk says, that we must necessarily wait till we have the reports of all the Committees, and thus get the whole subject before us.

Sir, is this necessary? I say no: not at all. I heard a figure used the other day, (not here, but elsewhere,) in support of the gentleman's position, which strongly elicited this general remark: that figurative language has place in argument only for the purpose of illustration; and not as itself a source of argument. If we attempt to found arguments upon figures of speech, we shall ever be led astray. The figure used was this: it was said that a sculptor could not possibly know how to carve one limb of a statue, till he first knew the height and proportions of the whole figure he was to produce. This even, if true, would decide nothing in the case before us: for this body could decide, for example, on the question touching the unity of the Executive, without having any reference to the number of members of the House of Delegates, and so of many other branches of the general subject of Government. It is, indeed, true, that there are some points which have a bearing upon the whole system; but this is not true of all the points, nor is it true of many. Sir, were this not so, the House could not decide upon any question whatever; for, obviously, we can go but step by step; one subject only can be taken up at once, and we must and do presume the rest, and act accordingly. We must anticipate, and it will be fair and just to do so, that the coming reports will concur with what the Committees have already done. Give the gentleman all he asks: and suppose we go into Committee of the Whole, and take up the Constitution clause by clause. A member offers an amendment to the first clause; he does so, and can do so, only in anticipation of what is to be done, with the remaining clauses. So that it will come precisely to the same thing, and the difficulty, if it be one, applies as much to the one plan as to the other. I think we shall save much time, by adopting the plan of the Committee.

Besides, there will be this additional advantage. The several propositions will not only be each considered in Committee, but they will be considered in their bearing on all the other portions of that Department of Government to which they appertain, because all that Department will be in the hands of one Committee. Thus, for example, if, in the Legislative Committee, a proposition is reported to reduce the number of members in the House of Delegates, the same Committee will have it in their power to consider the propriety of also reducing the numbers of the Senate. Thus, there will be a harmony in the sub-divisions of each general Department of Government.

This puts an end to the gentleman's conjecture, that no ten men will agree as to what amendments should be made in the Constitution. But, if that were the fact, it only follows that there is the greater need for the Committees proposed; for there may, according to the gentleman, be no two in the Committee of the Whole, who will fully agree in all their views, and so the debates will be interminable. In Com-

mittee of the Whole, there is no restraint as to speaking; each member may speak as often as he pleases; and, for aught, I see, we shall be in session here till mid-winter, if his plan prevails. If the previous question be taken is, whether the Constitution is to be amended at all, let it be taken. That, after all, is the argument of the gentleman from Norfolk, though it is not his plan. Such a resolution would be in order, and it proves that we have still a subject to act on here, even if the Committees shall be appointed. So we may also give instructions to the Committees. The whole subject is open to the body. I take it for granted, the delay produced by discussions in the Committees will not be great, and the gentleman can put an end to it whenever he will, the Convention concurring. But, Sir, to prevent the evil he suggests, I shall offer a proposition to enlarge all the Committees so as to make them each consist of twenty-four members. This will prevent the appearance of that solid phalanx which glares before the gentleman's imagination so formidably. If there shall be thirteen to eleven in each Committee, the majority will not be very large; and this is another advantage attending the scheme. The Committees, like the Convention itself, will in this way be prepared to act upon a knowledge of the whole subject before us.

Mr. M. concluded by an apology for having trespassed so long upon the time of the Convention, and then resumed his seat.

The question was then called for on Mr. Tazewell's amendment.

Mr. Randolph demanded that the question be taken by yeas and nays: it was so taken accordingly, and the yeas and nays were reported by the Secretary, as follows:

AYES.—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dronigoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Barbour of Orange, Roane, Taylor of Caroline, Garnett, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentiss, Townes, Taliaferro and Upshur—34.

NOES.—Messrs. Monroe, (President,) Anderson, Coffman, Williamson, Baldwin, Johnson, McCoy, Moore, Beirne, Smith, Miller, Baxter, Stanard, Mercer, Fitzhugh, Henderson, Cooke, Powell, Opie, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, McMillan, Campbell of Washington, Byars, Cloyd, Chapman, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Macrae, Taylor of Norfolk, Clayton, Mennis, Saunders, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Joynes and Bayly—54.

So Mr. Tazewell's amendment was rejected by the Convention.

The report of the Committee was then read at the Secretary's table by sections:

And the question being on the first resolution by the Committee, as follows:

Resolved, That a Committee be appointed to take into consideration the Bill or Declaration of Rights, and to report to this Convention whether, in their opinion, any, and if any, what amendments are necessary therein.

A desultory conversation arose, in which Messrs. Johnson, Mercer and Doddridge took part, and which resulted in a motion by Mr. Mercer to lay the first resolution for the present upon the table: the motion was agreed to.

The second resolution having been read as follows:

Resolved, That a Committee be appointed to take into consideration the Legislative Department of Government as established by the present Constitution, and to report to this Convention, either a substitute for the same, or such amendments thereto, as in their opinion are necessary, or that no substitute or amendment is necessary,

Mr. Benjamin W. Leigh referring to the notice given by Mr. Mercer, that he should move to enlarge the Committees to twenty-four members each, protested against this being taken for granted as about to pass, and being thus made an argument with the House. He was opposed to such enlargement, and hoped it would not take place. Committees of twenty-four members would scarcely deserve the name; they would be so many debating bodies, with all the forms of debate observed elsewhere, instead of the colloquial discussion appropriate to Committees, and which constituted indeed their chief advantage. Mr. Mercer declined a formal reply till the resolutions should have been gone through with.

The third and fourth resolutions from the Committee were then read and adopted, as follows:

Resolved, That the Executive Department of Government as established by the present Constitution, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary.

Resolved, That the Judicial Department of Government as established by the present Constitution, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary therein.

The fifth resolution was then read as follows:

Resolved, That all such parts of the present Constitution as are not referred by the foregoing resolutions, be referred to a Committee, to enquire and report whether any, and if any, what amendments are necessary therein.

This resolution being amended, so as to add, "the Declaration of Rights," among the subjects transferred to the Committee, it was, thus amended, adopted by the House.

The sixth and last resolution of the Committee was then read as follows :

Resolved, That no original resolution offered to the Convention proposing any amendment to the Constitution or Declaration of Rights, be discussed on its merits in the House, till it shall have been referred.

Mr. Benjamin W. Leigh called for the reasons in its favor.

Mr. Johnson briefly stated them as consisting in a desire for the maturest discussion of every proposition before it was adopted, and for the prevention of the points referred to the Committees being mooted at the same time in the House.

Mr. Leigh objected to the words of the resolution as going to prevent any member who might propose an amendment in the House, from explaining the nature and intention of such amendments.

Mr. Johnson denied that such consequence would follow, and referred in support of his view of the case, to the usage in the House of Delegates, where it was a standing rule that no proposition could be discussed until it had been seconded, and still a gentleman offering a resolution was held in order to give a succinct explanation of its purport, provided the discussion stopped there.

The question being put on the adoption of the sixth resolution, a division was called for, and the votes being counted by Messrs. Leigh and Johnson, stood as follows : Ayes 43, Noes 32: so the resolution was adopted.

The first resolution was then taken from the table, and rejected ; its contents having been superseded.

Mr. Mercer then moved the following resolution :

Resolved, That so much of the twenty-fourth rule of the Convention, as limits the number of a Select Committee to thirteen, be suspended, for the purpose of enlarging the three Committees required by the preceding resolutions, to such extent, as that each Committee shall comprehend one member from every Senatorial District, and composing the Committee required by the fourth resolution of such members as may not be placed on the preceding Committees.

Mr. M. now replied to the objections before stated by Mr. Leigh, and referred to precedents in the Journals of the House of Delegates, to shew that Committees of twenty, of thirty-three, and one of forty-three members, had been appointed on important subjects. No great evil, he thought, arose from the formal mode of discussion, pursued in large Committees, though he acknowledged, that he should prefer the colloquial mode of debate.

A desultory conversation ensued, in which Messrs. Leigh, Stanard, Mercer, Fitzhugh and Doddridge took part, and in which several modifications of the resolution were proposed. Mr. Marshall enquired of Mr. Mercer, if he intended to bring forward, at all, the two resolutions he had read yesterday ?

Mr. Mercer replying in the negative,

Mr. Marshall said, that if he had brought them forward, he should have thought, that one Committee of twenty-four was sufficient ; as the subject to be referred to it, was geographical in its nature, and had a bearing on members, according to the part of the State where they resided. In such a Committee, twenty-four members might be required, in order to collect the opinions of every part of the State ; but this was not equally necessary on questions not geographical in their nature. When the measure proposed, was to affect all the citizens alike, there was not the same reason for a difference of opinion, in different districts. Still, if no objection arose from the proposed number of members in the Committees, Mr. Marshall said, he should have submitted to the arrangement ; but there was an objection, and a serious one, which did arise from it : it was the wish, he presumed, of every member, that at least some portion of the business before the Convention, might be entered upon and completed as soon as practicable. But it must be obvious, that if each of the Committees were to consist of twenty-four members, more time would be consumed in preparing their reports, than if the number were smaller. If, for example, the Committees should consist of thirteen members, the reports, though he hoped not less considered, would be considered and reported upon in less time.

Mr. Scott moved to amend the resolution, by striking out the word "three," so as to read, "the first of the Committees," instead of "the first *three* of the Committees."

Mr. Mercer observed in reply to Judge Marshall, that there was not a part of the Constitution, in which all parts of the State were not deeply interested. How could the Convention know the opinions of the people, for instance, respecting the Executive Department of Government, but by consulting the people ? and how could it consult them, but through their representatives ? So respecting the Judiciary ; he could assure the honorable and venerable gentleman that that was a question of a local character ; there did exist on that subject, evils of very great magnitude ; but

those evils were not universal, but local in their extent. The gentleman was ready to admit that the principle involved in the first of the resolutions was such as required a Committee from all parts of the State; he believed the same principle would be found to apply to all the other resolutions. Mr. M. then stated the reasons why he should not offer his two resolutions, and concluded by a compliment to the judgment and standing of the gentleman from Richmond.

Mr. Marshall rejoined. If his friend had understood him to say that every part of the community was not interested in every part of the Constitution, he had greatly mistaken his meaning. But the interest they take in the other parts of the Constitution not geographical in their bearing, was not local or geographical in its kind. Gentlemen on one side of James River, for instance, had the same interest in the Executive Department of the Government, as those on the other side. That interest did not depend at all upon their residence; on that Department, therefore, he could see no reason for a Committee taken from all parts of the State; but the case was very different when the question of the basis of representation was involved. As that subject was not necessarily separated from the Legislative Department, he saw no need of reporting on it by a separate Committee. As there was nothing geographical in the Executive or Judicial Departments of Government, he could not see the need of having a Geographical Committee to consider them; and as a large Committee was likely to be slow in reporting, he preferred one of more limited numbers.

After some remarks of Mr. Johnson, going to shew the inconvenience of large Committees, he expressed his determination to vote for the amendment, leaving all other Committees but one to be appointed in the ordinary mode by the Chair.

The question was then taken on the amendment of Mr. Scott, and decided in the negative—Ayes 39, Noes 46. So the amendment was rejected.

The resolution was then carried, ayes 51.

A conversation now arose as to certain documents, the printing of which was desired with a view to ascertain as far as practicable, the present population of the State.

Mr. Joynes offered the following resolution:

Resolved, That the Secretary cause to be printed for the use of the members of this Convention 100 copies of the Census of this State, taken in the years 1790, 1800, 1810 and 1820; and also, in separate tables, 100 copies of the aggregate militia returns of each county in those years, and in the year 1829, and the three years preceding.

Messrs. Joynes, Claytor, Doddridge, Green, Mercer, Upshur, Scott, and B. W. Leigh, took part in this discussion; but before the gentlemen had agreed upon all the documents to be printed, Mr. Powell moved to lay the resolution of Mr. Joynes upon the table.

Whereupon, on motion of Mr. Stanard, the House adjourned.

SATURDAY, OCTOBER 10, 1829.

The Convention met at 12 o'clock, and its sitting was opened with prayer by the Rev. Mr. Lee.

The following gentlemen were announced as having been appointed to constitute the several Committees ordered on Friday:

Committee to consider the Legislative Department of the Government.

Messrs. Leigh of Chesterfield,
Brodnax,
Tyler,
Anderson,
Johnson,
Beirne,
Mason,
Randolph,
Madison,
Mercer,
Cooke,
Pendleton,

Messrs. George,
Roane,
Chapman,
Summers,
Doddridge,
Green,
Tazewell,
Campbell of Bedford,
Townes,
Pleasants,
Taliaferro,
Joynes.

Committee on the Executive Department.

Messrs. Giles,
Dromgoole,
Nicholas,

Messrs. Campbell of Washington,
Garnett,
Cloyd,

Messrs. Coffman,
M'Coy,
Smith,
Trezvant,
Leigh of Halifax,
Barbour of Orange,
Fitzhugh,
Powell,
Naylor,

Messrs. Duncan,
Morgan,
Barbour of Culpeper,
Loyall,
Claytor,
Cabell,
Gordon,
Bates,
Upshur.

Committee on the Judicial Department.

Messrs. Jones,
Alexander,
Marshall,
Harrison,
Baldwin,
Miller,
Claiborne,
Venable,
Stanard,
Henderson,
Griggs,
Boyd,

Messrs. M'Millan,
Morris,
Mathews,
Laidley,
Campbell of Ohio,
Scott,
Taylor,
Mennis,
Martin,
Thompson,
Bayly.

Committee to consider the Bill of Rights, and other matters not referred to the foregoing Committees.

Messrs. Taylor of Chesterfield,
Goode,
Clopton,
Williamson,
Moore,
Baxter,
Urquhart,
Logan,
Opie,
Donaldson,
Byars,

Messrs. Taylor of Caroline,
Oglesby,
See,
Wilson,
Macrae,
Prentis,
Saunders,
Stuart,
Massie,
Read.

The President then laid before the Convention the following letter received by him from the honorable Judge Dade, a member elect to the Convention:

To the honorable the PRESIDENT of the Convention, called to alter or amend the Constitution of the State of Virginia.

SIR:—Being unable from ill health to attend my duties in the Convention, I take the earliest opportunity of enclosing to you my resignation of that high trust.

Occurring after the meeting of the Convention, it will, of course, devolve the filling of my vacancy on the remaining Delegates.

With the most earnest wishes for the success of your labours, and with the highest respect for yourself and the body in which you preside, I am your most obedient servant,

WM. A. G. DADE.

October 5th, 1829.

Mr. Taliaferro of King George, said, that he believed in expressing his unfeigned regret for the cause that had produced the communication just read, he should hazard nothing by saying, that in Judge Dade the Convention had lost one of its most valuable members. He was very sure he should hazard nothing in the view of all those to whom that gentleman was known. As he presumed that some authentic record of the fact of Judge Dade's resignation was requisite, it was his purpose to move that the letter announcing it, should be put on file by the Secretary, and entered upon the Journal of the Convention, but as a previous motion was required by order, he would first move that the letter be laid upon the table: which motion being agreed to, Mr. T. moved that the communication from Judge Dade be entered on the records of the Convention.

This motion was carried *nem. con.*

Mr. Joynes of Accomack, now moved again the resolution which he offered yesterday, and which was modified so as to read as follows:

Resolved, That the Auditor of Public Accounts, be requested to prepare and lay before this Convention, Tabular Statements, shewing the free white, free coloured, and slave population of each county of this Commonwealth, according to the Census taken in the years 1790, 1800, 1810, and 1820, respectively; the area in acres of each county; the quantity of land taxed in each county, in the year 1828; the amount of taxes assessed in each county, in the year 1828; the amount of tax paid into the Public Treasury, from each county, in that year; the amount of tax accruing on each subject of taxation; the white, free coloured, and slave tythables of each county, in the years 1800, 1810, 1820, and 1829; and also a statement of the free white, free coloured, and slave population of each county, in the year 1829, so far as he can deduce the same by a comparison of the tythables, and the entire population in the years 1800, 1810, and 1820.

Resolved, That the Auditor be also requested, in addition to such Tabular Statements, in reference to each county, to state the information above requested, in relation to the four following divisions of this Commonwealth, viz: 1st, from the sea-coast, to the head of tide-water; 2d, from the head of tide-water to the Blue Ridge; 3d, from the Blue Ridge to the Alleghany; and 4th, from the Alleghany to the wetward.

The above resolutions having been agreed to,

Mr. Green of Culpeper, moved the following:

Resolved, That the Auditor be also requested to furnish a statement, from the property books in his office, of the number of persons in each county and corporate town of this Commonwealth, assessed to the payment of any revenue tax, in the year 1828.

The resolution was adopted.

On motion of Mr. Doddridge, it was ordered, that the foregoing list of the members of Committees, be printed for the use of the House. And then the House adjourned till Monday 12 o'clock.

MONDAY, OCTOBER 12, 1829.

The Convention met pursuant to adjournment, at 12 o'clock, and was opened with prayer by the Rev. Mr. Kerr (of the Baptist Church.)

Mr. Neal, from the District of King George, appeared and took his seat.

The President laid before the Convention the following letter, which was read at the Clerk's table:

RICHMOND, October 12, 1829.

SIR:—We discharge a melancholy duty in announcing to you the death of Calvin H. Read, Esq. a Delegate to the Convention of Virginia from the twenty-fourth District, who departed this life on the night of the 6th inst.

This event having occurred since the meeting of the Convention, we, the remaining members of that Delegation, have proceeded, according to the provisions of the act of Assembly, to fill the vacancy thereby occasioned. We have appointed William K. Perrin, Esq. of the county of Gloucester, as the successor of Mr. Read, as will appear by the document which we have the honor to enclose.

With high consideration we are, your obt^s serv^{ts},

THOS. R. JOYNES,
THOS. M. BAYLY,
A. P. UPSHUR.

*The honorable JAMES MONROE, President
of the Convention—Present.*

On motion of Mr. Joynes of Accomack, the letter was laid upon the table.

Mr. Joynes thereupon moved the following resolution:

Resolved, That the members of this Convention will wear crape for thirty days in testimony of their respect for the memory of Dr. Calvin H. Read of Northampton, who was elected a member of this Convention and who has died since the meeting of the Convention.

On offering the above resolution, Mr. J. said, that when he heard of the death of Dr. Read, he had at first been in doubt as to the propriety of moving such a resolution as he now had the honor to submit. He was not then apprised of the practice in the House of Delegates on such occasions; but he had since ascertained, that it was usual on the death of a member, to adopt such a mark of respect, as that he had just proposed. The gentleman, in remembrance of whom, he asked the Convention to wear crape for thirty days, was one of the most amiable and upright citizens of the State, and although this slight tribute of regard, was in itself, perhaps, but of little value, it might be some consolation to the weeping widow of the deceased, and to his family

and friends, to know, that a testimonial of public respect, usual in other cases of a similar kind, had not been withheld from the memory of Dr. Read.

The resolution was unanimously adopted. Whereupon, Mr. Joynes moved the following additional resolution:

Resolved, That the Sergeant at Arms cause to be delivered, as soon as practicable, to Mr. William K. Perrin of Gloucester, a notification of his appointment as a member of this Convention, to supply the vacancy, occasioned by the death of Dr. Calvin H. Read, of Northampton.

Mr. Fitzhugh, from the Committee appointed to fix the compensation of officers, reported in part as follows:

"The Committee appointed to enquire into the compensation proper to be allowed the officers of the Convention, have agreed to the following resolution:

"Resolved, That the allowances to the officers of this Convention for their services, during its Session, shall be to the President, in addition to his mileage as a member of the Convention, eight dollars per day, to the Secretary one hundred and fifty dollars per week, to the Sergeant at Arms thirty dollars per week, to each of the door-keepers twenty-eight dollars per week, and to the person who cleans the Capitol, fourteen dollars per week."

Mr. F. observed in explanation, that the Committee had not found it possible to include in their report, a proper compensation for the public printer, inasmuch as no correct estimate could at present be formed of the amount of public printing he would have to execute. They had also included in their report, an allowance to a person not strictly an officer of the Convention, but performing a subordinate duty in its service, viz: the sweeping the Hall and passages. In taking this liberty, they conceived itself as acting in conformity with the spirit, though not the letter of their appointment, and in doing so they had followed a precedent set by the practice in the House of Delegates.

The resolution recommended by the Committee, was adopted.

Mr. Doddridge then offered the following resolutions:

"Resolved, That the several Committees consisting of a member from each Senatorial District, have power respectively to appoint a Clerk, and to cause such printing to be done as they may deem expedient in the performance of their respective duties.

"Resolved, That the Committee appointed to enquire into the compensation proper to be allowed the officers of the Convention, be instructed to provide and report a fit compensation for such Clerks as may be appointed under the preceding resolution."

The resolutions were agreed to.

Mr. Joynes then moved the following:

"Resolved, That the Auditor of Public Accounts be requested to prepare and lay before the Convention a statement of the number of persons in each county of this Commonwealth, who are charged on the land books of the years 1828 and 1829, with taxes on a quantity of land not less than twenty-five acres, or on a lot or part of a lot in a town established by law."

This resolution having been adopted,

On motion of Mr. Brodnax, the Convention adjourned to meet to-morrow at one o'clock.

[This alteration in the hour of meeting, being designed to allow further time to the several Committees now in session.]

TUESDAY, OCTOBER 13, 1829.

The Convention met at one o'clock, and was opened with prayer by the Rev. Mr. Kerr.

Mr. Marshall of Richmond said, that he was charged with a memorial from a numerous and respectable body of citizens, the non-freeholders of the city of Richmond. The object sought in the memorial, was an extension of the right of suffrage. The language of the memorial was respectful, and the petitioners accompanied their request with such arguments, as to them appeared convincing, in support of the object in view.

The memorial was thereupon received, and read as follows:

The Memorial of the Non-Freeholders of the City of Richmond, respectfully addressed to the Convention, now assembled to deliberate on amendments to the State Constitution:

Your memorialists, as their designation imports, belong to that class of citizens, who, not having the good fortune to possess a certain portion of land, are, for that cause only, debarred from the enjoyment of the right of suffrage. Experience has but too

clearly evinced, what, indeed, reason had always foretold, by how frail a tenure they hold every other right, who are denied this, the highest prerogative of freemen. The want of it has afforded both the pretext and the means of excluding the entire class, to which your memorialists belong, from all participation in the recent election of the body, they now respectfully address. Comprising a very large part, probably a majority of male citizens of mature age, they have been passed by, like aliens or slaves, as if destitute of interest, or unworthy of a voice, in measures involving their future political destiny: whilst the freeholders, sole possessors, under the existing Constitution, of the elective franchise, have, upon the strength of that possession alone, asserted and maintained in themselves, the exclusive power of new-modelling the fundamental laws of the State: in other words, have seized upon the sovereign authority.

It cannot be necessary, in addressing the Convention now assembled, to expatiate on the momentous importance of the right of suffrage, or to enumerate the evils consequent upon its unjust limitation. Were there no other than that your memorialists have brought to your attention, and which has made them feel with full force their degraded condition, well might it justify their best efforts to obtain the great privilege they now seek, as the only effectual method of preventing its recurrence. To that privilege, they respectfully contend, they are entitled equally with its present possessors. Many are bold enough to deny their title. None can show a better. It rests upon no subtle or abstruse reasoning; but upon grounds simple in their character, intelligible to the plainest capacity, and such as appeal to the heart, as well as the understanding, of all who comprehend and duly appreciate the principles of free Government. Among the doctrines inculcated in the great charter handed down to us, as a declaration of the rights pertaining to the good people of Virginia and their posterity, "as the basis and foundation of Government," we are taught,

"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity: namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

"That all power is vested in, and consequently derived from, the people.

"That a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish the Government.

"That no man, nor set of men, are entitled to exclusive or separate emoluments or privileges, but in consideration of public services.

"That all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have a right of suffrage, and cannot be taxed, or deprived of their property, without their consent, or that of their representative, nor bound by any law, to which they have not, in like manner, assented, for the public good."

How do the principles thus proclaimed, accord with the existing regulation of suffrage? A regulation, which, instead of the equality nature ordains, creates an odious distinction between members of the same community; robs of all share, in the enactment of the laws, a large portion of the citizens, bound by them, and whose blood and treasure are pledged to maintain them, and vests in a favoured class, not in consideration of their public services, but of their private possessions, the highest of all privileges: one which, as is now in flagrant proof, if it does not constitute, at least is held practically to confer, absolute sovereignty. Let it not be urged, that the regulation complained of and the charter it violates, sprung from the same honored source. The conflict between them is not on that account the less apparent. Nor does it derogate from the fair fame of the Convention of '76, that they should not have framed a Constitution perfect in all its parts. Deliberating amid the din of arms, not merely on a plan of Government, but on the necessary means for conducting a most unequal struggle for national existence, it was not to be expected, that the relative rights of the citizens, could be maturely considered, or adjusted in detail. From any change of the regulation, in regard to suffrage, a subject prolific, always, of much dissension, they might have feared to generate feuds among those, upon whose harmony of feeling and concert of action, depended the salvation of their country. They left it, therefore, as they found it. The non freeholders, moreover, unrepresented in the Convention, and for the most part, probably, engaged in resisting the common enemy, it is fair to infer, in the actual condition of the country, had neither the opportunity nor the inclination to press their claims. Nor should it be forgotten, that the Convention having been chosen by the freeholders, whose political power was derived from the abrogated Government, many of our wisest Statesmen regarded the Constitution itself, as wanting in authority, or at least as repealable by a succeeding Legislature: and, accordingly, it has, in point of fact, since undergone a material change, in the very provision now in question, touching the right of suffrage.

If the Bill of Rights may not challenge respect, the opinions of any individual, however eminent, will be still more lightly regarded. Yet your memorialists cannot but

exult in the countenance their cause has received from him, who was ever foremost to assert the rights of his fellow men; the venerated author of the Declaration of Independence, and of the Act of Religious Freedom. When those rights are brought in question, they know of none whose sentiments are worthy of higher estimation. To none among the founders of our Republic, are we indebted for more in its institutions, that is admirable in theory, or valuable in practice. His name is identified with the independence of his country; with all that is liberal and enlightened in her policy. Never had liberty an advocate of more unaffected zeal; of more splendid abilities; of purer principles. Nor is there in ancient or modern times, an example to be found of one, who in his life and conduct, more strongly exemplified the sincerity of his faith, or more brightly illustrated the beauty of his tenets.

Your memorialists could not on this occasion, in justice to themselves, omit all allusion to the avowed sentiments of this illustrious Statesman, nor withhold from his memory, a passing tribute of admiration and gratitude.

Dreading the influence of the doctrines and opinions now adverted to, conscious of the futility of any attempt to reconcile with them their favorite policy, the enemies of extended suffrage have not hesitated to deride them as the crude conceptions of visionary politicians. The Bill of Rights, until it became necessary for their purposes to assail it, the theme of unqualified approbation, whilst they affect to admire the beauty of its theory, they paradoxically assert, tends in practice to mischievous results. Its principles, they cannot deny, are founded in truth and justice. But these practical politicians look to a higher sanction, and sacrifice without remorse both justice and truth on the altar of expediency. Would it not be well they should enlighten the world with a system of their own, which should conform to the practice they would approve, and substitute the exploded theories of the wisest Statesmen, the purest Patriots, and the soundest Republicans, who ever adorned any age or country.

But not to the authority of great names merely, does the existing restriction upon suffrage stand opposed: reason and justice equally condemn it. The object, it is presumed, meant to be attained, was, as far as practicable, to admit the meritorious, and reject the unworthy. And had this object really been attained, whatever opinions might prevail as to the mere right, not a murmur probably would have been heard. Surely it were much to be desired that every citizen should be qualified for the proper exercise of all his rights, and the due performance of all his duties. But the same qualifications that entitle him to assume the management of his private affairs, and to claim all other privileges of citizenship, equally entitle him, in the judgment of your memorialists, to be entrusted with this, the dearest of all his privileges, the most important of all his concerns. But if otherwise, still they cannot discern in the possession of land any evidence of peculiar merit, or superior title. To ascribe to a landed possession, moral or intellectual endowments, would truly be regarded as ludicrous, were it not for the gravity with which the proposition is maintained, and still more for the grave consequences flowing from it. Such possession no more proves him who has it, wiser or better, than it proves him taller or stronger, than him who has it not. That cannot be a fit criterion for the exercise of any right, the possession of which does not indicate the existence, nor the want of it the absence, of any essential qualification.

But this criterion, it is strenuously insisted, though not perfect, is yet the best human wisdom can devise. It affords the strongest, if not the only evidence of the requisite qualifications; more particularly of what are absolutely essential, "permanent common interest with, and attachment to, the community." Those who cannot furnish this evidence, are therefore deservedly excluded.

Your memorialists do not design to institute a comparison; they fear none that can be fairly made between the privileged and the proscribed classes. They may be permitted, however, without disrespect, to remark, that of the latter, not a few possess land: many, though not proprietors, are yet cultivators of the soil: others are engaged in avocations of a different nature, often as useful, pre-supposing no less integrity, requiring as much intelligence, and as fixed a residence, as agricultural pursuits. Virtue, intelligence, are not among the products of the soil. Attachment to property, often a sordid sentiment, is not to be confounded with the sacred flame of patriotism. The love of country, like that of parents and offspring, is engrafted in our nature. It exists in all climates, among all classes, under every possible form of Government. Riches oftener impair it than poverty. Who has it not is a monster.

Your memorialists feel the difficulty of undertaking calmly to repel charges and insinuations involving in infamy themselves, and so large a portion of their fellow-citizens. To be deprived of their rightful equality, and to hear as an apology that they are too ignorant and vicious to enjoy it, is no ordinary trial of patience. Yet they will suppress the indignant emotions these sweeping denunciations are well calculated to excite. The freeholders themselves know them to be unfounded: Why, else, are arms placed in the hands of a body of disaffected citizens, so ignorant, so depraved, and so numerous? In the hour of danger, they have drawn no invidious distinctions between the sons of Virginia. The muster rolls have undergone no scrutiny, no com-

parison with the land books, with a view to expunge those who have been struck from the ranks of freemen. If the landless citizens have been ignominiously driven from the polls, in time of peace, they have at least been generously summoned, in war, to the battle-field. Nor have they disobeyed the summons, or, less profusely than others, poured out their blood in the defence of that country which is asked to disown them. Will it be said they owe allegiance to the Government that gives them protection? Be it so: and if they acknowledge the obligation; if privileges are really extended to them in defence of which they may reasonably be required to shed their blood, have they not motives, irresistible motives, of attachment to the community? Have they not an interest, a deep interest, in perpetuating the blessings they enjoy, and a right, consequently, to guard those blessings, not from foreign aggression merely, but from domestic encroachment?

But, it is said, yield them this right, and they will abuse it: property, that is, landed property, will be rendered insecure, or at least overburthened, by those who possess it not. The freeholders, on the contrary, can pass no law to the injury of any other class, which will not more injuriously affect themselves. The alarm is sounded too, of danger from large manufacturing institutions, where one corrupt individual may sway the corrupt votes of thousands. It were a vain task to attempt to meet all the flimsy pretexts urged, to allay all the apprehensions felt or feigned by the enemies of a just and liberal policy. The danger of abuse is a dangerous plea. Like *necessity*, the detested plea of the tyrant, or the still more detestable plea of the Jesuit, *expediency*; it serves as an ever-ready apology for all oppression. If we are sincerely republican, we must give our confidence to the principles we profess. We have been taught by our fathers, that all power is vested in, and derived from, the people; not the freeholders: that the majority of the community, in whom abides the physical force, have also the political right of creating and remoulding at will, their civil institutions. Nor can this right be any where more safely deposited. The generality of mankind, doubtless, desire to become owners of property: left free to reap the fruit of their labours, they will seek to acquire it honestly. It can never be their interest to overburthen, or render precarious, what they themselves desire to enjoy in peace. But should they ever prove as base as the argument supposes, force alone; arms, not votes, could effect their designs; and when that shall be attempted, what virtue is there in Constitutional restrictions, in mere wax and paper, to withstand it? To deny to the great body of the people all share in the Government; on suspicion that they may deprive others of their property, to rob them, in advance of their rights; to look to a privileged order as the fountain and depository of all power; is to depart from the fundamental maxims, to destroy the chief beauty, the characteristic feature, indeed, of Republican Government. Nor is the danger of abuse thereby diminished, but greatly augmented. No community can exist, no representative body be formed, in which some one division of persons or section of country, or some two or more combined, may not preponderate and oppress the rest. The east may be more powerful than the west, the lowlanders than the highlanders, the agricultural than the commercial or manufacturing classes. To give all power, or an undue share, to one, is obviously not to remedy but to ensure the evil. Its safest check, its best corrective, is found in a general admission of all upon a footing of equality. So intimately are the interests of each class in society blended and interwoven, so indispensable is justice to all, that oppression in that case becomes less probable from any one, however powerful. Nor is this mere speculation. In our ecclesiastical polity it has been reduced to practice; and the most opposed in doctrine, the most bitter in controversy, have forgotten their angry conflicts for power, and now mingle in harmony.

The example of almost every other State in the Union, in which the patrician pretensions of the landholder have, since their foundation, been unknown or despised, in many of which, too, manufacturing institutions exist on an extensive scale, ought alone to dispel these visionary fears of danger from the people. Indeed, all history demonstrates that the many have oftener been the victims than the oppressors. Cunning has proved an over-much for strength. The few have but too well succeeded in convincing them of their incapacity to manage their own affairs; and having persuaded them, for their own good, to submit to the curb, have generously taken the reins, and naturally enough converted them into beasts of burthen.

As to the danger from large manufacturing establishments in Virginia, when is their disastrous influence to be experienced? Is it not apparent that such establishments must, for an indefinite period, be at the mercy of those who affect to dread them, and may be shackled or suppressed, as fear or fancy may dictate? For how many centuries must the disfranchised citizens be content to relinquish their rights, because, in some remote age of the world, a distant posterity, similarly circumstanced, may be powerful enough, and base enough withal, to trample upon the rights of others?

But if justice is not to be expected, if self-aggrandizement is to be assumed as the sole ruling principle of men in power, then, your memorialists conceive, the interests of the many deserve at least as much to be guarded as those of the few. Conceding

the truth of the proposition assumed, what security, they would enquire, is there against the injustice of the freeholders? How is the assertion made good, that they can pass no law affecting the rights of others without more injuriously affecting their own? They cannot do this, it is said, because they possess, in common with other citizens, all personal rights, and, in addition, the rights pertaining to their peculiar property. And if this be a satisfactory reason, then one land-holder in each county or district would suffice to elect the representative body; or, the impossibility of injuring others being shewn, a single land-holder in the Commonwealth might still more conveniently exercise the sovereign power. But, is not the proposition obviously false? What is there to prevent their imposing upon others undue burthens, and conferring on themselves unjust exemptions? Supplying the public exigencies by a capitation or other tax exclusively or oppressively operating on the other portions of the community? Exacting from the latter, in common with slaves, menial services? Placing around their own persons and property more efficient guards? Providing for their own injuries speedier remedies? Denying to the children of all other classes admission to the public seminaries of learning? Interdicting to all but their own order, indeed, the power to elect, and the right to be elected, are most intimately if not inseparably united; all offices of honor or emolument, civil or military? Why can they not do all this, and more? Where is the impossibility? It would be unjust: admirable logic! Injustice can be predicated only of non-freeholders.

Still it is said, the non-freeholders have no just cause of complaint. A freehold is easily acquired. The right of suffrage, moreover, is not a natural right. Society may grant, modify, or withhold it, as expediency may require. Indeed all agree that certain regulations are proper: those, for example, relating to age, sex, and citizenship. At best, it is an idle contest for an abstract right whose loss is attended with no practical evil.

If a freehold be, as supposed, so easily acquired, it would seem highly impolitic, to say no more, to insist on retaining an odious regulation, calculated to produce no other effect than to excite discontent. But the fact is not so. The thousands expelled from the polls too well attest the severity of its operation. It is by no means easy or convenient for persons whom fortune or inclination have engaged in other than agricultural pursuits, to withdraw from those pursuits, or from the support of their families, the amount requisite for the purchase of a freehold. To compel them to do this, to vest that sum in unproductive property, is to subject them, over and above the original cost, the assessments upon it, and the probable loss by deterioration, to an annual tax, equivalent to the profits they might have derived from the capital thus unprofitably expended. What would be thought of a tax imposed, or penalty inflicted, upon all voters, for exercising what should be the unbought privilege of every citizen? How much more odious is the law that imposes this tax, or rather, it may be said, inflicts this penalty, on one portion of the community, probably the larger and least able to encounter it, and exempts the other?

The right of suffrage, however, it seems, is not a natural right. If by natural, is meant what is just and reasonable, then, nothing is more reasonable than that those whose purses contribute to maintain, whose lives are pledged to defend the country, should participate in all the privileges of citizenship. But say it is not a natural right. Whence did the freeholders derive it? How become its exclusive possessors? Will they arrogantly tell us they own the country, because they hold the land? The right by which they hold their land is not itself a natural right, and by consequence, nothing claimed as incidental to it. Whence then did they derive this privilege? From grant or conquest? Not from the latter. No war has ever been waged to assert it. If from the former, by whom was it conferred? They cannot, if they would, recur to the Royal Instructions of that English monarch, of infamous memory, who enjoined it upon the Governor of the then Colony of Virginia, "to take care that the members of the Assembly be elected *only by the freeholders*, as being more agreeable to the custome of England:" he might have added more congenial also with monarchical institutions. If Colonial regulations might properly be looked to, then the right, not of freeholders merely, but of *freemen*, to vote, may be traced to a more distant antiquity, and a less polluted source. But, by our ever-glorious revolution, the Government whence these regulations emanated, was annulled, and with it all the political privileges it had conferred, swept away. Will they rely on the Constitutional provision? That was the act of men delegated by themselves. They exercised the very right in question in appointing the body from whom they profess to derive it, and indeed gave to that body all the power it possessed. What is this but to say they generously conferred the privilege upon themselves? Perhaps they may rely on length of time to forestal enquiry. We acknowledge no act of limitations against the oppressed. Or will they disdain to shew any title; and, clinging to power, rest on force, the last argument of Kings, as its source and its defence? This were, doubtless, the more politic course.

Let us concede that the right of suffrage is a social right; that it must of necessity be regulated by society. Still the question recurs, is the existing limitation proper? For obvious reasons, by almost universal consent, women and children, aliens and slaves, are excluded. It were useless to discuss the propriety of a rule that scarcely admits of diversity of opinion. What is concurred in by those who constitute the society, the body politic, must be taken to be right. But the exclusion of these classes for reasons peculiarly applicable to them, is no argument for excluding others to whom no one of those reasons applies.

It is said to be *expedient*, however, to exclude non-freeholders also. Who shall judge of this expediency? The society: and does that embrace the proprietors of certain portions of land only? Expedient, for whom? for the freeholders. A harsh appellation would he deserve, who, on the plea of expediency, should take from another his property: what, then, should be said of him who, on that plea, takes from another his rights, upon which the security, not of his property only, but of his life and liberty depends?

But the non-freeholders are condemned for pursuing an abstract right, whose privation occasions no practical injury.

Your memorialists do not, perhaps, sufficiently comprehend the precise import of this language, so often used. The enjoyment of all other rights, whether of person or property, they will not deny, may be as perfect among those deprived of the privilege of voting, as among those possessing it. It may be as great under a despotism, as under any other form of Government. But they alone deserve to be called free, or have a guarantee for their rights, who participate in the formation of their political institutions, and in the control of those who make and administer the laws. To such as may be disposed to surrender this, or any other immunity, to the keeping of others, no practical mischief may ensue from its abandonment; or if any, none that will not be justly merited. Not so with him who feels as a freeman should; who would think for himself and speak what he thinks; who would not commit his conscience or his liberty to the uncontrolled direction of others. To him the privation of right, of that especially, which is the only safeguard of freedom, is practically wrong. So thought the fathers of the republic. It was not the oppressive weight of the taxes imposed by England on America: it was the assertion of a right to impose any burthens whatever upon those who were not represented; to bind by laws those who had no share, personal or delegated, in their enactment, that roused this continent to arms. Have the principles and feelings that then prevailed, perished with the conflict to which they gave birth? If not, are they not now grossly outraged? The question is submitted to your candor and justice.

Never can your memorialists agree that pecuniary burthens or personal violence are the sole injuries of which men may dare to complain. It may be that the freeholders have shewn no disposition greatly to abuse the power they have assumed. They may have borne themselves with exemplary moderation. But their unrepresented brethren cannot submit to a degrading regulation which takes from them, on the supposition of mental inferiority or moral depravity, all share in the Government under which they live. They cannot yield to pretensions of political superiority founded on the possession of a bit of land, of whatever dimensions. They cannot acquiesce in political bondage, because those who affect to sway over them the rod of empire, treat them leniently. The privilege which they claim, they respectfully insist, is theirs as of right; and they are under no obligation to assign any reason whatever for claiming it, but that it is their own.

Let the picture be for a moment reversed. Let it be imagined that the non-freeholders, possessing the physical superiority which alone can cause their political influence to be dreaded, should, at some future day, *after the manner of the freeholders*, take the Government into their own hands, and deal out to the latter the same measure of justice they have received at their hands. It is needless to enquire into the equity of such a proceeding; but would they not find for it in the example set them at least a plausible excuse, and to the freeholders' remonstrance retort the freeholders' argument? That argument your memorialists will not now recapitulate; they leave it to others to make the application.

Your memorialists have thought it due to the magnitude of the question, to examine at some length the grounds on which their political proscription is usually defended. If they have occasionally been betrayed into warmth of expression, the transcendent importance of the franchise they claim, and the nature of the objections they have been compelled to meet, will plead their apology. Deep would be their humiliation in now addressing you, delegated as you have been by those who hold them in political subjection, did they not but too well remember, it is their brethren to whom they impute their wrongs, and from whom they solicit reparation. Never, indeed, can they cease to protest against the measures which have made you, not the representatives of the people, but the organ of a privileged order. Still they approach you as the guardians of the public weal, however so constituted; as dispensers of the

public justice; as an assemblage of distinguished citizens wielding the power, however irregularly conferred, of new-modelling the fundamental institutions of the State. They bow with respectful deference to the virtues and talents which have raised you to the eminent station you now occupy. They appeal, through you, to the justice of their country, and confidently trust, under your auspices, to assume that equal rank in the community, to which they conceive themselves justly entitled, and which, until they shall indeed be unworthy to enjoy it, they can never willingly renounce.

In behalf of the meeting,

WALTER D. BLAIR, *Chairman.*

Teste,

JOHN B. RICHARDSON, *Secretary.*

Mr. Marshall said that, however gentlemen might differ in opinion on the question discussed in the memorial, he was sure they must all feel that the subject was one of the deepest interest, and well entitled to the most serious attention of this body. He therefore moved its reference to the Committee on the Legislative Department of Government.

The motion was agreed to, and the memorial referred accordingly.

Mr. Mercer then presented a memorial, which, he said, came from a highly respectable body of citizens in Fairfax county. Its purport and tenor were very similar to that which had just been read; and he moved its reference to the same Committee.

The motion was agreed to, and the reading of the memorial having been dispensed with, it was referred to the Legislative Committee.

On motion of Mr. McCoy, the House then adjourned, to meet to-morrow at one o'clock.

WEDNESDAY, OCTOBER 14, 1829.

The Convention met at one o'clock, and its sitting was opened with prayer by the Rev. Mr. Taylor, of the Baptist Church.

No business presenting itself,

Mr. McCoy moved an adjournment, but withdrew his motion in favor of Mr. Doddridge, who moved a recess of the House till four o'clock, hoping that the First Auditor might have had time to prepare and lay before the House the documents which had been ordered by the Convention.

The President then laid before the House the following letter from the Auditor:

AUDITOR'S OFFICE, }
October 13, 1829. }

SIR:—In compliance with one of the resolutions adopted by the Convention on the 10th inst. I have the honor to transmit a statement of the number of persons in each county, and corporate town, within this Commonwealth, charged with State tax on moveable property, for the year 1828. The documents called for by the other resolutions will be furnished as soon as they can be prepared.

I have the honor to be, Sir,

With great respect and consideration,

Your obedient servant,

JAMES E. HEATH,
Auditor of Public Accounts.

JAMES MONROE, Esq.

President of the Convention.

Mr. Doddridge moved to lay the communication on the table and print it, and that the Auditor should deliver the residue when prepared to the public printer.

The motion was agreed to.

Mr. Johnson, with a view to give the Committees more time, moved that when the House adjourned, it adjourn to meet at two instead of one o'clock, which being agreed to, on motion of Mr. Doddridge, the Convention adjourned.

THURSDAY, OCTOBER 15, 1829.

The Convention met at two o'clock, agreeably to adjournment, and was opened with prayer by the Rev. Mr. Kerr, of the Baptist Church.

Mr. Anderson presented a memorial from the non-freeholders of Shenandoah, praying the extension of the right of suffrage; which, on Mr. Anderson's motion, was referred to the Legislative Committee.

Mr. McCoy rose to observe, that having no disposition to sit there, or see others sit there, without having something to do, he moved that the Convention rise; which was agreed to without opposition.

And then the Convention adjourned until to-morrow, two o'clock.

FRIDAY, OCTOBER 16, 1829.

The Convention assembled at two o'clock, and was opened with prayer by the Rev. Mr. Taylor, of the Baptist Church:

And (having no business before them) on Mr. Naylor's motion, the Convention adjourned till to-morrow, two o'clock.

SATURDAY, OCTOBER 17, 1829.

The Rev. Mr. Kerr offered up a prayer; after which, the Convention was called to order.

No business being yet ready to be laid before the Convention, Mr. Doddridge moved that the Convention adjourn; he stated that some additional documents had been prepared by the Auditor of Public Accounts, which would be placed in the hands of the public printer under a previous resolution of that body.

The motion to adjourn prevailed without opposition; and the Convention accordingly adjourned till Monday, two o'clock.

MONDAY, OCTOBER 19, 1829.

The Convention met at two o'clock, and its sitting was opened with prayer by the Rev. Mr. Armstrong, of the Presbyterian Church.

Mr. Fitzhugh, from the Committee on Compensations, made the following farther report, in part:

The Committee appointed to enquire into the compensation proper to be allowed the officers of the Convention, have agreed to the following resolution:

Resolved, That the sum of sixteen dollars be allowed the Sergeant at Arms for notifying William K. Perrin of his election to the Convention.

The report was adopted.

Mr. Taylor of Chesterfield, from the Committee on the Bill of Rights, &c. made the following report:

The Committee to whom was referred the Bill or Declaration of Rights, and all such parts of the present Constitution as are not referred to the Committees on the Legislative, Executive and Judicial Departments of the Government, have had the subjects to them referred, under their consideration, and have in part performance of the duties devolved on them, agreed upon the following resolution:

Resolved, That in the opinion of this Committee the Bill or Declaration of Rights, &c. requires no amendment."

The report was laid upon the table.

Mr. Harrison of Rockingham, presented a memorial from the non-freeholders of that county of a similar general import to those heretofore presented; and which was, on his motion, referred without reading to the Legislative Committee.

No farther business being before the Convention, on motion of Mr. Mercer, the House adjourned.

TUESDAY, OCTOBER 20, 1820.

The Convention met at two o'clock, when its sitting was opened with prayer by the Rev. Mr. Hamner, of the Presbyterian Church.

Mr. Marshall, from the Committee on the Judiciary Department of Government, made the following report from the Committee:

1. *Resolved*, That the Judicial power shall be vested in a Court of Appeals, in such Inferior Courts, as the Legislature shall from time to time ordain and establish, and in the County Courts. The jurisdiction of these tribunals shall be regulated by law. The Judges of the Court of Appeals and of the Inferior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment, or public trust: and the acceptance thereof, by either of them, shall vacate his judicial office. No modification or abolition of any Court, shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any judicial duties which the Legislature shall assign him.

2. *Resolved*, That the present Judges of the Court of Appeals, Judges of the General Court, and Chancellors remain in office until the expiration of the first session of the Legislature, held under the new Constitution, and no longer. But the Legislature may cause to be paid to such of them, as shall not be re-appointed, such sum as, from their age, infirmities, and past services, shall be deemed reasonable.

3. *Resolved*, That Judges of the Court of Appeals and Inferior Courts, except Justices of the County Courts, and the Aldermen or other Magistrates of Corporation Courts, shall be elected by the concurrent vote of both Houses of the General Assembly, each House voting separately, and having a negative on the other; and the members thereof voting *vice voce*. The votes of the members shall be entered on the Journals of their respective Houses. Should the two Houses, in any case, fail to concur in the election of a Judge, during the session, the Governor shall decide the election, by appointing one of the two persons who first received a majority of votes in the Houses in which they were respectively voted for. But if any vacancy shall occur during the recess of the General Assembly, the Governor, or other person performing the duty of Governor, may appoint a person to fill such vacancy, who shall continue in office until the end of the next succeeding session of the General Assembly.

4. *Resolved*, That the Judges of the Court of Appeals, and of the Inferior Courts, shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

5. *Resolved*, That on the creation of any new county, Justices of the Peace shall be appointed, in the first instance, as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause be deemed necessary to increase their number, appointments shall be made by the Governor, by and with the advice and consent of the Senate, on the recommendation of their respective County Courts.

6. *Resolved*, That the Clerks of the several Courts shall be appointed by their respective Courts, and their tenure of office be prescribed by law.

7. *Resolved*, That the Judges of the Court of Appeals and of the Inferior Courts, offending against the State, either by mal-administration, corruption, or neglect of duty, or by any other high crime or misdemeanor, shall be impeachable by the House of Delegates, such impeachment to be prosecuted before the Senate. If found guilty by a majority of two-thirds of the whole Senate, such persons shall be removed from office. And any Judge so impeached shall be suspended from exercising the functions of his office until his acquittal, or until the impeachment shall be discontinued or withdrawn.

8. *Resolved*, That Judges may be removed from office by a vote of the General Assembly: but two-thirds of the whole number of each House must concur in such vote, and the cause of removal shall be entered on the Journals of each. The Judge against whom the Legislature is about to proceed shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon.

The report having been read, on motion of Mr. Marshall, it was laid upon the table.

Mr. Giles, from the Committee on the Executive Department of Government, made the following report, which was read, and on his motion, laid upon the table.

The Committee appointed on the Executive branch of the Constitution, have, according to order, had under consideration the subjects referred to them, and have come to the following resolutions thereupon:

1. *Resolved*, That the chief Executive Office of this Commonwealth, ought to be vested in a Governor.

2. *Resolved*, That there ought to be appointed a Lieutenant-Governor of this Commonwealth.

3. *Resolved*, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council.

4. *Resolved*, That in case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties and powers of his office, the said powers and duties shall devolve on the Lieutenant-Governor; and the Legislature may provide for the case of removal, death, or similar inability of the Lieutenant-Governor.

5. *Resolved*, That the sheriffs in the different counties in the Commonwealth, shall, hereafter, be elected by the voters qualified to vote for the most numerous branch of the Legislature.

6. *Resolved*, That the commissioned officers of militia companies be nominated to the Executive by a majority of their respective companies.

7. *Resolved*, That the field officers of regiments be nominated to the Executive by a majority of the commissioned officers of their respective regiments.

8. *Resolved*, That no pardon shall be granted in any case, until after conviction or judgment.

Both reports were subsequently ordered to be printed.

Mr. Giles farther stated, that he was instructed by the Committee, to ask that they be discharged from the farther consideration of the subjects referred to them, and he made that motion accordingly, which was agreed to, and the Committee was thereupon discharged.

Mr. Powell of Frederick, said, that having belonged to the Committee which had last reported, and having in that Committee been in a large minority of its members, who were in favour of a very different organization of the Executive Department of Government, from that which the Committee had adopted, and just reported to the House, he asked permission to read, and to lay upon the table, certain resolutions which he held in his hand. Leave having been granted, Mr. Powell then offered the following, which were read, laid upon the table, and ordered to be printed, viz:

Resolved, That the Executive Department of the existing form of Government ought to be amended as follows:

SEC. 1. The Executive power shall be vested in a Governor. He shall hold his office for years, and be ineligible for the term of years thereafter. And a Lieutenant-Governor shall be chosen at the same time, for the same term, and under the same restrictions.

SEC. 2. The Lieutenant-Governor shall act as President of the Senate, but he shall have no right to vote except the Senate be equally divided upon any question; in which case he shall have the casting vote.

SEC. 3. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the Commonwealth, nor any who shall not have attained the age of years, and who shall not have resided years next preceding his election, in the State.

SEC. 4. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the most numerous branch of the Legislature, by the voters qualified to vote for members of the General Assembly; provided that the election shall take place throughout the Commonwealth on the same day. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor, shall be elected. In case two or more persons shall have an equal number of votes for Governor or for Lieutenant-Governor, the Legislature shall immediately by joint ballot of both Houses, choose of the persons having an equal number of votes for Governor or Lieutenant-Governor, the Governor or Lieutenant-Governor, as the case may be.

SEC. 5. The Governor shall be commander-in-chief of the militia. He shall have power to convene the Legislature on extraordinary occasions. He shall, from time to time, give information to the Legislature of the condition of the Commonwealth, and recommend to their consideration, such measures as he shall judge necessary and expedient. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed.

SEC. 6. The Governor and Lieutenant-Governor, shall, at stated times, receive for their services, a compensation which shall neither be increased nor diminished during the term for which they shall have been elected.

SEC. 7. The Governor shall have power to grant reprieves and pardons after conviction, for all offences, except treasons and in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next session, when the Legislature may pardon, or direct the execution of the criminal, or grant a farther reprieve.

SEC. 8. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of his office, his powers and duties shall devolve on the Lieutenant-Governor; and in case of the removal, death, or resigna-

tion, or like inability of the Lieutenant-Governor, the Legislature may provide by law upon whom the duties of Governor shall devolve, until such disabilities shall be removed, or a Governor shall be elected.

SEC. 9. The Governor shall have power to nominate, and by and with the advice and consent of the Senate, appoint Judges of the Supreme Court, or Court of Final Jurisdiction, and Judges of such Inferior Courts as may from time to time be established by law; all militia officers from the rank of Colonel inclusive; the Treasurer, Auditor of Public Accounts, Register of the Land-Office, and Attorney-General. The Legislature may by law vest the appointment of all other officers of the Commonwealth, whose appointments are not herein otherwise provided for, in the Governor, with the advice and consent of the Senate, or in the Courts of Law.

SEC. 10. The Governor shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session of that body.

SEC. 11. The Governor shall have power to require in writing, the opinions of the Lieutenant-Governor, and of the Attorney-General, upon all matters appertaining to the duties of his office.

SEC. 12. No person, whose tenure of office depends on the pleasure of the Governor, shall be removed from office without the advice and consent of the Senate to such removal. But the Governor shall have power, at any time, to suspend such officer, and appoint another to discharge the duties of his office, until the next session of the Senate, and until their advice and consent to such removal shall be ascertained and expressed.

Mr. Gordon of Albemarle, presented a petition from citizens of that county, on the subject of freedom of religion.

The petition was received, and without reading, referred to the Committee on the Legislative Department.

Mr. Morgan said he was a member of the Committee which had been so unfortunate as not to agree upon all the propositions, properly referred to them, under the Executive Department of the Government, and like the gentleman from Frederick (Mr. Powell) he would ask leave to submit for the consideration of the Convention, several resolutions on the subject of that Department, which he wished read and laid on the table.

Permission having been granted, Mr. Morgan thereupon offered the following, which were read, laid upon the table, and ordered to be printed:

The Executive power shall be vested in a Governor and Lieutenant-Governor, to assist in the administration of the affairs of Government, when required by the Governor; and who shall act as Governor in case of the death, resignation, or removal of the Governor from office, until another be appointed; and in case of impeachment, temporary incapacity of any kind, or absence of the Governor from the seat of Government, until his restoration or return. And if at any time there should be no acting Governor, and the Lieutenant-Governor shall be impeached, or from any other cause not acting, the Executive authority shall devolve on, and be exercised by, some person appointed by law for that purpose.

The Governor and Lieutenant-Governor shall be annually appointed by joint ballot of the Senate and House of Delegates, and their terms of office shall end on the last day of December of every year; but no person shall be eligible to the office of Governor for more than three years at any one time, nor again, until after he shall have been out of that office four years; and in like manner after the end of every three years of service.

The Governor shall exercise the Executive power of the Government, according to the laws of the Commonwealth, and see that they shall be faithfully executed. He may, at his own discretion, and shall, on application of a majority of the Senate or House of Delegates, convene the General Assembly: And he shall have power to grant reprieves and pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; in which cases, the House of Delegates shall alone have and exercise the power of granting them; but no pardon shall be granted in any case, until after judgment or conviction.

And then the Convention adjourned, till to-morrow, two o'clock.

WEDNESDAY, OCTOBER 21, 1829.

The Convention met at two o'clock, and its sitting was opened with prayer by the Rev. Mr. Armstrong.

Mr. Marshall, from the Committee on the Judicial Department of Government, then rose and said, that although it was not probable the Convention would take up any one of the reports of the Select Committees which had been appointed, until the reports of all those Committees should have been received, yet, with a view to put the reports which had been rendered in a way to be acted upon by the Convention, if such should be its pleasure, he moved that the report made by the Committee on the Judicial Department, be referred to a Committee of the Whole Convention, and be made the Order of the Day for to-morrow.

Mr. Upshur of Accomack, said, that he had understood a wish to be entertained by some members of the House, that a smaller Committee than a Committee of the Whole, should be raised for the purpose of receiving and digesting the reports of the Select Committees, and laying the whole before the Convention to receive its action thereon. Should such a course be adopted after the report of the Judicial Committee had gone to a Committee of the Whole, it would have again to be withdrawn from their hands and put with the rest under the care of the Sub-Committee. He would, therefore, very respectfully suggest to the member from Richmond, whether it would not be expedient to withdraw for the present the motion which he had made. Mr. U. said that he was the rather induced to this course, by observing that the Chairman of the Committee on the Executive (Mr. Giles) was not in his place, and he knew that it was not the wish of that Committee, that their resolution should take the course now proposed.

Mr. Marshall said, that he was by no means solicitous that the motion he had made should be adopted: his only object had been to put business in such a train, that it might be taken up and acted upon whenever the House should wish to consider it. The reference of the report to a Committee of the Whole, implied no sort of necessity that the report should be immediately acted upon. As to the suggestion of the gentleman from Accomack, (Mr. Upshur) if the House should agree to refer all the reports to a Select Committee before the Committee of the Whole should have perfected its action on the particular report which was the subject of his motion; all that would have to be done, would be to discharge the Committee of the Whole from the further consideration of it: the motion he had made, would not be at all in the way of such a course. It seemed to him very possible, and extremely probable, that the House would not refer the respective reports to a Select Committee, until they should have received some report from the Committee of the Whole: nevertheless, he was entirely willing to withdraw his motion, if the gentleman insisted upon it.

Mr. Doddridge of Brooke, observed that if the suggestion of the gentleman from Accomack, (Mr. Upshur) had been occasioned by any thing that had fallen from him, (Mr. D.) the gentleman had certainly misunderstood him. The course he had desired to see pursued, was that each report should be referred to a separate Committee of this House, and after all the reports should then have been considered and fully discussed in Committee of the Whole, they be finally referred to one general Committee, which might properly be called a Copying Committee, who should transcribe and report the whole to the Convention.

Mr. Upshur, after a few words of explanation, withdrew the suggestion he had made, and the question having been taken on the motion of Mr. Marshall, it was decided in the affirmative, and the report of the Judicial Committee was accordingly referred to a Committee of the Whole Convention, and made the Order of the Day for to-morrow.

Mr. Leigh of Chesterfield, now moved the following resolution:

Resolved, That it be a standing order of the Convention, that the Convention shall every day resolve itself into a Committee of the Whole Convention, to consider the existing Constitution of the Commonwealth, and such propositions for amendment or alteration thereof, as shall be referred to or made in the said Committee.

Mr. Doddridge moved to lay the resolution upon the table, suggesting, as a reason, that its adoption would involve the Convention in difficulty. One of the rules they had adopted for the proceedings, required that the Order of the Day should be called at twelve o'clock. If the resolution of the gentleman from Chesterfield should take effect, the Convention would have to meet to-morrow at twelve o'clock, and take up the report of the Judiciary Committee at once: but he did not suppose it to be the wish of any gentleman to take up that, or any other of the reports, until the Legislative Committee should have reported. The course proposed would cut short the sittings of that Committee, which he was happy to say had now drawn so far toward a close, that some glimpses of the morning light could be perceived, and a hope was

entertained that if they were allowed, as at present, to sit till two o'clock, they might, perhaps, finish their discussions to-morrow.

A debate on a question of order now arose, in which Messrs. Stanard, Doddridge, P. P. Barbour, Mercer, Leigh, M'Coy and Johnson took part.

It was affirmed on the one hand, that nothing would be gained by laying the resolution of Mr. Leigh on the table, because the report of the Judicial Committee, having been referred to a particular Committee of the Whole, and made the Order of the Day for to-morrow, the Convention would still have to meet, go into Committee of the Whole, and take up the report, unless the order were postponed: and a general order, if necessary, might as well be postponed as a specified one, though indeed, the general standing order would not involve any necessity of postponement. If the resolution should be adopted, the Committee of the Whole would be at liberty to take up, at its own election, either one of the reports referred to it; comparing each with the corresponding portion of the existing Constitution. It might pass, at will, from one of these reports to the other, without the ceremony of rising, reporting, and again sitting, for that purpose. It might sit on any day, without being confined, as must otherwise be the case, to a particular day specified: and its powers in this respect were illustrated by reference to the practice, as well of the House of Delegates, as of the House of Representatives of the United States.

It was insisted, on the other hand, that there was no rule which now bound the Convention, to make the consideration of a subject referred to a Committee of the Whole, the Order of the Day, for any particular day. That the Committee of the Whole existed already, and a subject had been referred to it: when that Committee met, it might take up any subject whatever, which might have been referred to a Committee of the Whole: in this Convention as in the House of Delegates, there existed but *one* Committee of the Whole; and all subjects referred in that form, belonged to it, as of course, and might be taken up in such order as the Committee itself should choose. There was no need of referring to it the existing Constitution, because a comparison of the proposed amendments with that which they proposed to amend, was necessarily involved in the discussion of such amendments; nor was it at all desirable, that the Constitution should go to such Committee, and there be taken up, and considered by sections, as though it were a reported bill. When an amendment to a law was referred, either in the House of Delegates, or in Congress, to a Committee of the Whole, it was never the usage to refer to that Committee the original law also.

The question being at length taken on the motion of Mr. Doddridge to lay Mr. Leigh's resolution on the table, it was decided in the affirmative—Ayes 40—Noes 37. So the resolution was laid upon the table accordingly.

Mr. Nicholas, who had been in a minority of the Committee on the Executive, in relation to some of the features of the report of that Committee, particularly that part of it which related to the abolition of the Executive Council, asked and obtained leave to lay the following resolutions on the table, and to have them printed, viz:

Resolved, That the ninth and tenth sections of the present Constitution be retained, and that the eleventh be substituted by the following resolution:

A Privy Council, or Council of State, consisting of four members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members, or the people at large, to assist in the administration of Government. They shall annually choose out of their own members, a Lieutenant-Governor, who, in case of the death, inability, or necessary absence of the Governor from the Government, shall act as Governor. The Governor shall be the President of the Council, and shall in all cases of division, have the casting vote. Two members, with the Governor or Lieutenant-Governor, as the case may be, shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. The members of the Council shall be elected by joint ballot of both Houses of the General Assembly, for four years. At the first election, the two Houses shall, by joint resolution, divide the persons elected into two classes: The seats of the Councillors of the first class, shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; so that one half may be chosen every second year; and if vacancies happen by resignation, or otherwise, they shall be filled by joint ballot of the two Houses of the General Assembly. An adequate but moderate salary, shall be settled on them, during their continuance in office, and they shall be incapable during that time, of sitting in either House of Assembly.

In consequence of the failure of Mr. Leigh's resolution, the order which directed the Committee of the Whole, to consider the report from the Judicial Committee to-morrow, was, on motion of Mr. P. P. Barbour, re-considered, and altered to *Monday* next; whereupon, on motion of Mr. Powell, the Convention adjourned to meet to-morrow, at two o'clock.

THURSDAY, OCTOBER 22, 1829.

The Convention met at two o'clock, and its sitting was opened with prayer by the Rev. Mr. Armstrong, of the Presbyterian Church.

Mr. Giles moved, that the report from the Committee on the Executive, be now taken up; which motion being agreed to, he then moved that the report be referred to a Committee of the Whole.

Mr. Stanard suggested to him the propriety of forbearing his motion till the House should have come to some decision upon the resolution offered yesterday, by the gentleman from Chesterfield, (Mr. Leigh,) and now lying upon the table: the Convention had not yet determined whether it would have a Committee of the Whole, analogous in its duties and powers, to a Committee of the Whole, in the House of Delegates. If the motion should be pressed at this time, the effect would be, that the report would go to a distinct Committee of the Whole, from that to which had been referred the report from the Judicial Committee: for, as there has been separate orders, there would, of course, be distinct Committees. But if the Convention should agree to adopt the resolution upon its table, the order referring each report to a distinct Committee of the Whole, would have to be rescinded.

Mr. Giles observed, in reply, that not having been present yesterday, he was not apprised that any difficulty would arise from the motion he had made, but seeing that some embarrassment was apprehended, he would, with great pleasure, withdraw the motion; and he withdrew it accordingly.

Mr. Powell said, that although he did not regard it as at all important that the report should be referred at this time, he did not perceive the same difficulty as had presented itself to the member from Spottsylvania, (Mr. Stanard.) The report might, certainly, be referred to the same Committee of the Whole to which had been referred the report from the Judicial Committee; and in like manner, the reports from all the Select Committees, might be referred to one and the same Committee of the Whole; who would then have the whole before them at once. He saw, he said, the gentleman from Orange, before him (Mr. P. P. Barbour,) shake his head, and he was well aware that he had far less experience in Legislative proceedings than that gentleman; but unless he was greatly deceived, indeed, the course he had indicated was frequently pursued in the House of Representatives of the United States.

Mr. Barbour replied, that the gentleman from Frederick (Mr. Powell) was certainly correct, when he stated that several analogous subjects were often referred to the same Committee of the Whole; but then those subjects were not all held to be before the Committee at one and the same time; but were taken up consecutively, and each considered and discussed by itself, and as distinct from the others.

Mr. Taylor of Chesterfield, from the Committee on the Bill of Rights, made the following report in part, which, on his motion, was laid upon the table and ordered to be printed.

The Committee to whom was referred the Bill or Declaration of Rights, and all such parts of the present Constitution as are not referred to the Committees on the Legislative, Executive, and Judicial Departments of the Government, have, according to order, had the subjects to them referred, under their consideration, and have further, in part performance of the duties devolved on them, agreed upon the following resolutions:

1. *Resolved, as the opinion of this Committee,* That the Constitution of this State ought to be so amended, as to provide a mode in which future amendments shall be made therein.

2. *Resolved,* That the first and second sections of the present Constitution, ought to be stricken out, and that an introductory clause, adapted to the amended Constitution, be substituted in lieu thereof.

3. *Resolved,* That the twelfth, twenty-first, and twenty-second sections of the present Constitution, ought to be stricken out as no longer necessary.

4. *Resolved,* That the freedom of Speech and of the Press, ought to be held sacred and guaranteed by the Constitution.

5. *Resolved,* That no title of nobility shall be created or granted; and no person holding any office of profit or trust under the United States, or under any King, Prince, or foreign State, shall hold any office under this State.

6. *Resolved, as the opinion of this Committee,* That the Constitution ought to be so amended, as to provide, "that no man shall be compelled to frequent or support any religious worship, place or ministry, whatsoever, nor shall be enforced, restrained, molested, or burthened in his body, or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men, shall be free to profess, and by argument to maintain, their opinions in matters of religion; and that the same shall in no wise, diminish, enlarge, or affect their civil capacities."

On motion of Mr. M'Coy, the House then adjourned.

FRIDAY, OCTOBER 23, 1829.

The Convention met at two o'clock, and was opened with prayer by the Rev. Mr. Parks, of the Methodist Church.

Mr. Madison from the Committee on the Judicial Department, asked and obtained leave, that that Committee might sit for the discharge of its duties during the sittings of the Convention.

Mr. Taylor of Norfolk, a member of the Committee on the Bill of Rights, and other matters not referred to the previous Committees, asked and obtained leave to lay upon the table the following propositions, which were read and ordered to be printed:

Resolved 1st, That the elective franchise should be *uniform*; so that, throughout the State, similar qualifications should confer a similar right of suffrage.

Resolved 2d, That, among those entitled by the Constitution to exercise the elective franchise, there should be *entire equality of suffrage*; so that, in all elections, the suffrage of one qualified voter should avail as much as that of another qualified voter, whatever may be the disparity of their respective fortunes.

Resolved 3d, That equal numbers of qualified voters are entitled to equal representation throughout the State.

Resolved 4th, That as *individual suffrage* should be *equal*, without respect to the disparity of individual fortune, so an *equal number* of qualified voters are entitled to equal representation, without regard to the disparity of their *aggregate* fortunes.

Resolved 5th, That in all pecuniary contributions to the public service, regard should be had to the ability of individuals to contribute; and as this ability to pay, from disparity of fortune is *unequal*, it would be unjust and oppressive to require *each* citizen to pay an *equal* amount of public taxes.

On motion of Mr. Summers, the Convention then adjourned.

SATURDAY, OCTOBER 24, 1829.

The Convention met at two o'clock, and its sitting having been opened with prayer by the Rev. Mr. Parks, of the Methodist Church,

Mr. Madison, from the Committee on the Legislative Department of the Government, made the following report:

The Committee appointed on the Legislative Department of the Government, have, according to order, had under consideration the subjects referred to them, and have agreed to the following

REPORT.

1. *Resolved*. That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively.

2. *Resolved*, That a Census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1831, the year 1845, and thereafter at least once in every twenty years.

3. *Resolved*, That the right of suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution: *Provided*. That no person shall vote by virtue of his freehold only, unless the same shall be assessed to the value of at least \$ for the payment of taxes, if such assessment be required by law: And shall be extended; first, to every free white male citizen of the Commonwealth resident therein, above the age of twenty-one years, who owns, and has possessed for six months, or who has acquired by marriage, descent, or devise, a freehold estate, assessed to the value of not less than dollars for the payment of taxes, if such assessment shall be required by law: second, or who shall own a vested estate in fee, in remainder, or reversion, in land, the assessed value of which shall be dollars; third, or who shall own and have possessed a leasehold estate with the evidence of title recorded, of a term originally not less than five years, and one of which shall be unexpired, of the annual value, or rent of dollars; fourth, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: *Provided*, nevertheless, that the right of suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor or marine, in the service of the United States, nor by any person convicted of any infamous offence; nor by citizens born without the Commonwealth, unless they shall have resided therein for five

years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated.

4. *Resolved*, That the number of members in the Senate of this State ought to be neither increased nor diminished, nor the classification of its members changed.

5. *Resolved*, That the number of members in the House of Delegates, ought to be reduced, so that the same be not less than one hundred and twenty, nor more than one hundred and fifty.

6. *Resolved*, That no person ought to be elected a member of the Senate of this State, who is not at least thirty years of age.

7. *Resolved*, That no person ought to be elected a member of the House of Delegates of this State, who is not at least twenty-five years of age.

8. *Resolved*, That it ought to be provided, that in all elections for members of either branch of the General Assembly, and in the election of all officers which may be required to be made by the two Houses of Assembly, jointly, or in either separately, with the exception of the appointment of their own officers, the votes should be given openly, or *vice voce*, and not by ballot.

9. *Resolved*, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

That the Legislature shall have no power to prescribe any religious test whatever, nor to establish by law any subordination or preference between different sects or denominations, nor confer any peculiar privileges or advantages on any one sect or denomination, over others; nor pass any law, requiring or authorising any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or the support of any church or ministry, but that it be left free to every person to select whom he pleases as his religious instructor, and to make for his support, such private contract as he pleases: Provided, however, that the foregoing clauses shall not be so construed, as to permit any minister of the gospel, or priest of any denomination, to be eligible to either House of the General Assembly.

10. *Resolved*, That no bill of attainder, or *ex-post facto* law, or law impairing the obligation of contracts, ought to be passed.

11. *Resolved*, That private property ought not to be taken for public uses without just compensation.

12. *Resolved*, That the members of the Legislature shall receive for their services, a compensation, to be ascertained by law, and paid out of the public Treasury; but no law increasing the compensation of members of the Legislature shall take effect until the end of the next annual session after the said law may have been enacted.

13. *Resolved*, That no Senator or Delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people.

Mr. Madison moved that the report be printed, and referred to the same Committee of the Whole, to which had been referred the report from the Committee on the Judicial Department.

Mr. Leigh of Chesterfield, requested the venerable mover to withdraw his motion for the present, until the Convention should have taken up, and decided upon, a resolution now lying on its table; and which, if adopted, would supersede the necessity of such a motion as had just been made.

Mr. Madison said, he would very readily consent to withdraw the motion, which he had made only in pursuance of the course taken with the other report; and the motion was thereupon withdrawn.

On motion of Mr. Leigh, the Convention then took up the following resolution, moved by him on Thursday last:

Resolved, That it be a standing order of the Convention, that the Convention shall every day resolve itself into a Committee of the Whole Convention, to consider the existing Constitution of the Commonwealth, and such propositions for amendment or alteration thereof, as shall be referred to or made in said Committee."

Mr. Leigh said, that when this resolution had been offered, it had been encountered by objections from various quarters of the House, all of which, he hoped, further reflection had since removed. The whole purpose of the resolution was, to conform

the practice of this Convention, in relation to its Committee of the Whole, to the course pursued in the House of Delegates; and did he believe that precisely the same object could be obtained in any other way, he should not have the least objection: but he did not think that that was the case. The original design, as proposed by some gentlemen, was, that the Convention should resolve itself into a Committee of the Whole, on the state of the Commonwealth, and there take up and discuss the various subjects reported upon by the Select Committees. But, said Mr. L. this Convention has not been charged with the state of the Commonwealth, but only with the revision of its fundamental law. The only duty assigned to us, is to consider the existing Constitution, and to propose therein such amendments as we may deem requisite and proper: for that reason, I suggest that instead of raising a Committee of the Whole, on the state of the Commonwealth, our's shall be a Committee of the Whole on the business before us. The course indicated by the resolution must be familiar to all who have served in the House of Delegates. I do not say that the practice there pursued, is the best that exists in the world; but it is the course best known to us.

Messrs. Mercer and Doddridge stated, that having had conversation with the gentleman from Chesterfield, in relation to the object and bearing of his resolution, the objections they had formerly entertained were removed, and they were now fully satisfied that it should be adopted.

The question being thereupon taken, the resolution was adopted *nem. con.*

Mr. Madison now moved the reference of the report from the Legislative Committee, to a Committee of the Whole; and it was so referred.

Mr. Giles made a similar motion, with respect to the report of the Committee from the Executive Department, which was also agreed to.

Mr. Marshall observed, that it was obviously convenient, that all the reports from the Select Committees, should be before the same Committee of the Whole; and as he believed, though he was not entirely sure, that the report of the Committee on the Judicial Department, had been referred to a particular Committee of the Whole, distinct from that recognized in the resolution this day adopted, he moved, if that were the case, that the particular Committee of the Whole, to which the report had gone, might be discharged from the farther consideration of it, and that the report might take the same direction, as had been given to those from the other Select Committees. The motion prevailed, and the report from the Judicial Committee was thereupon referred to the Committee of the Whole.

Mr. Powell moved, that certain resolutions, which at his request had been yesterday laid upon the table, and ordered to be printed, should now be referred to the Committee of the Whole.

The motion was agreed to, and then on motion of Mr. Leigh of Chesterfield, a general order was passed, directing that all reports made by any of the Select Committees, as well as all propositions, heretofore moved in the House, be referred to the Committee of the Whole.

On motion of Mr. Stanard, it was resolved, that when the House adjourned, it adjourn to meet on Monday next, at eleven o'clock, A. M.

Mr. Fitzhugh said, that he should have forborne to submit his personal views on the subjects referred to the Committee of the Whole, but for the course pursued by other gentlemen. As his views differed probably from both of what might be called the great parties in the House, he would ask the attention of the Convention to four resolutions, which he had drawn up, and which he asked leave to lay upon the table, and have printed, and referred to the Committee of the Whole.

Mr. F. then read in his place the following resolutions:

1. *Resolved*, That the Senate ought to be divided once in every _____ years into election districts, containing as nearly as possible, equal portions of white population; and that each district should be entitled to one Senator, and _____ Delegates; the former to be elected by the whole district, and the latter to be distributed amongst, and elected by the counties composing the district, as nearly as possible, in proportion to their white population.

2. *Resolved*, That the power of the Legislature to impose taxes, ought to be so limited, as to prohibit the imposition on property, either real or personal, of any other than an "*ad valorem*" tax; and that in apportioning this tax, either for State or county purposes, the whole visible property (household furniture and wearing apparel excepted) of each individual in the community, ought to be valued, and taxed only in proportion to its value: Provided, however, that no individual, whose property (with the above exception) does not exceed in value _____ dollars, ought to be subject to any property tax whatever: And provided, moreover, that the Legislature may impose on all professions and occupations, usually resorted to as a means of support, such tax as may be deemed reasonable.

3. *Resolved*, That to prevent any unfair distribution of the revenue of the Commonwealth, the Legislature ought to be prohibited from making appropriations (ex-

cept by votes of two-thirds of the members of both its branches) to any road or canal, until three-fifths of the amount necessary to complete such road or canal, shall have been otherwise subscribed, and either paid or secured to be paid as the law may direct.

4. *Resolved*, That the right of suffrage ought to be extended to all free male white citizens of twenty-one years of age and upwards, who having been _____ months preceding the election, freeholders or house-keepers in the county where they offer to vote, shall, within that time, have been assessed on property (exclusive of household furniture and wearing apparel) exceeding in value _____ dollars, or in a tax other than a property tax, of the amount of _____ dollars, and shall have actually paid all the taxes with which they may have been legally charged, during the current year.

The resolutions were referred accordingly.

On motion of Mr. Doddridge, it was ordered, that all the papers referred to the Committee of the Whole, should be printed consecutively, in one connected body.

Mr. Claytor of Campbell, offered the following resolutions, which, on his motion, were referred to the Committee of the Whole, and ordered to be printed.

1. *Resolved*, That the right of suffrage, belongs to, and ought to be exercised by, all free white male citizens within this Commonwealth, who have attained the age of twenty-one years, and are able to give sufficient evidence of "attachment to, and a permanent common interest with, the community."

2. *Resolved*, That nativity, or residence within the Commonwealth, for a sufficient time, and the payment of all taxes imposed, and performance of all public duties required by the laws of this Commonwealth, ought to be deemed sufficient evidence.

3. *Resolved, therefore*, That the right of suffrage ought to be exercised and enjoyed by all free white male citizens of this Commonwealth, who have attained the age of twenty-one years, except, first, paupers; second, persons convicted of infamous crimes; third, persons of unsound minds; fourth, persons who have refused or failed to pay all taxes assessed or imposed upon them by law, for the year next preceding any election at which they may offer to vote; fifth, persons in the military or naval service of the United States, or of this State; and sixth, persons not native born citizens of this Commonwealth, who have not resided at least three years within the same, and one year in the county, city, borough or election district in which they offer to vote, and been regularly assessed for taxation; and if liable to militia duty, enrolled in the militia of the same: Provided, however, that this last restriction shall not be so construed as to deprive any person of the right of suffrage, who had under this Constitution previously been qualified to exercise the same in any county, city, borough or election district, of this State: And provided, moreover, that wherever any question arises as to the right of an individual to vote, the *onus probandi* shall be upon the person claiming the right.

Mr. Campbell of Brooke, stating that he was in a considerable minority in the Judicial Committee on the propositions there adopted, would beg leave to submit his own views in the resolutions which had been rejected by that Committee. They were as follows:

Resolved, That the Judicial power shall be vested in a Court of Appeals, and in such Inferior Courts as the Legislature shall from time to time ordain and establish. The jurisdiction of these tribunals shall be regulated by law. The Judges of the Court of Appeals and of the Inferior Courts shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment or public trust; and the acceptance thereof by either of them, shall vacate his Judicial office.

Resolved, That the counties, cities and boroughs shall be divided into wards for the apportionment of Justices of the Peace among the people; and the persons authorized to vote for members of the General Assembly in each ward, shall elect the Justices of the Peace therein, who shall be commissioned to continue in office for the term of _____ years, but removeable for any bribery, corruption, or other high crime or misdemeanor, by indictment or information, in any Court holding jurisdiction thereof.

Resolved, That the Constables shall in like manner be elected annually in said wards.

Resolved, That the appointment of the Clerks of the several courts, and their tenure of office, shall be regulated by law.

Mr. Campbell of Brooke, also offered the following, which were made the objects of a similar order.

1. *Resolved*, That all persons now by law possessed of the right of suffrage, have sufficient evidence of permanent common interest with, and attachment to, the community, and have the right of suffrage.

2. *Resolved*, That all free white males of twenty-three years of age, born within the Commonwealth, and resident therein, have sufficient evidence of permanent common interest with, and attachment to, the community, and have the right of suffrage.

3. *Resolved*, That every free white male of twenty-one years of age, not included in the two preceding resolutions, who is now a resident, or who may hereafter become a resident within this Commonwealth, who is desirous of having the right of suffrage in this Commonwealth, shall, in open court, as may be prescribed by law, make a declaration of his intention to become a permanent resident in this State, and if such person shall, six months after making such declaration, solemnly promise to submit to, and support the Government of this Commonwealth, and if he shall not have been convicted of any high crime or misdemeanor against the laws of this Commonwealth, such person shall be considered as having permanent common interest with, and attachment to, the community, and shall have the right of suffrage.

And then, on motion of Mr. Doddridge, the House adjourned until Monday, eleven o'clock.

MONDAY, OCTOBER 26, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Sykes, of the Methodist Church.

Mr. Morgan of Monongalia, submitted the following resolutions, which, on his motion, were referred to the Committee of the Whole Convention:

"*Resolved*, That the Legislative power shall be vested in the General Assembly of Virginia, which shall consist of a Senate and House of Delegates. But no Minister of the Gospel of any denomination, or person holding any lucrative office, place, or appointment, shall be a Senator or Delegate.

"The Senate shall consist of thirty-two Senators, a majority of whom, and no less, shall form a quorum, to do business; for whose election the State shall be divided from time to time as equally as may be according to the number of free white citizens, into sixteen districts; and at the first election, there shall be two Senators chosen in each district; the Senator having the greatest number of votes, for the term of four years; the other, for the term of two years; And to keep up the succession, every second year thereafter, one Senator shall be chosen in each district, for the term of four years: But no person shall be a Senator, who shall not be a free white male citizen of the Commonwealth, of the age of twenty-five years, and an actual resident freeholder of his district, at the time of election.

"The House of Delegates shall consist of not less than sixty-four, nor more than one hundred and seventy-six Delegates, who shall be apportioned among the people, and chosen annually, in such manner that one equal sixteenth part of the whole number shall be elected in each Senatorial District: But no person shall be a Delegate, who shall not be a free white citizen of the age of twenty-one years, and an actual resident of his Senatorial District at the time of election.

"Each House shall have power to appoint its own officers; settle its own rules of proceeding; judge the qualifications, and determine the contested elections of its own members; issue writs of election to supply vacancies occurring during the sessions; originate bills, and adjourn without the consent of the other; but all laws shall be wholly approved and passed by both Houses.

"The General Assembly shall meet once or oftener in every year, and the members thereof, shall be exempt from arrest, and enlarged from imprisonment, in all cases except treason, felony, or perjury, during their sessions, and for the term of twenty days before and after: And no disqualification, prohibition or test, shall ever be declared, imposed or required by law, whereby to change or alter the eligibility of any person qualified under this Constitution to be a Senator or Delegate. But, all Senators and Delegates, before they shall enter upon the discharge of their duties, in presence of some person authorised to administer the same, shall make oath or solemn affirmation in this form, to wit: "I, —, do declare myself to be a citizen of the Commonwealth of Virginia, owing no allegiance to any foreign power, Prince, or State; and I do swear (or affirm) that I shall be faithful and true to the said Commonwealth of Virginia, so long as I continue a citizen thereof, and that I will faithfully, impartially, and justly, according to the best of my skill and judgment, perform the duties of my office (Senator or Delegate.) *So help me God.*"

"That all free white men of this Commonwealth, are of right, and forever shall be, equally free and independent: And suffrage, without regard to birth or condition of estate, being the indefeasible right of every such effective man, proving permanent common interest with, and attachment to, the community, it is declared to belong to, and, in the election of Representatives in the General Assembly, shall be exercised

by all free white male citizens of the Commonwealth, of the age of twenty-one years, who shall reside in the county, city, or borough, in which they respectively propose to vote, and shall have so resided for one whole year next before the time of election; other than those who shall have failed, in this Commonwealth, to pay any public tax or levy, or part thereof, within either of the two years next preceding the one in which they propose to vote; or paupers; or those under judgment of felony or other infamous crime; or soldiers, mariners, or marines in the service of the State, or of the United States: And that the right of suffrage may be exercised only by persons disposed for the prosperity and well-being of the Commonwealth, there shall be a tax of twenty-five cents per annum, levied on every free white man of the age of twenty-one years, to be collected and paid into the public treasury; and the Legislature shall annually set apart an amount of the property-tax equal to the whole amount of poll-tax so paid in; and these two sums shall be annually appropriated and constitute a principal fund, always to be preserved and vested in profitable stocks, or put to profitable uses, the interest and profit whereof, shall, in the best manner, be applied every year to the education of the youth of Virginia."

Mr. Leigh said, he perceived that it seemed to be the understanding of gentlemen, that under the rule reported by the Committee on rules of order, all propositions for amendments to the Constitution, must be made in the Convention itself, before they could be laid before the Committee of the Whole. Gentlemen, he saw, were acting on such an understanding. He had not so apprehended the meaning of the rule when it was adopted; on the contrary, he had supposed that members were at full liberty to move their proposed amendments in the Committee, without previously submitting them to the House. If this were not the just understanding of the rule, it ought to be known: and he now asked for information.

On motion of Mr. Mennis, the resolution containing the rule was read.

Mr. Doddridge said, that his understanding of the rule was, that when the Constitution in any of its parts, or the Bill of Rights, should be taken up in Committee of the Whole, it would then be in order for any gentleman to propose such amendments as related to the subject under consideration. If such a construction were not adopted, the Convention might have the whole political creed of every one of its members spread upon its minutes in the form of resolutions. The substance of the resolutions which had just been read, would have been properly presented in Committee of the Whole at the appropriate time. For instance: the great subject of the right of suffrage had been reported upon by the Legislative Committee, having been specified under three distinct resolutions. As each of these came before the Committee, every gentleman could propose to amend it in such way as to him seemed expedient, by striking out, for example, the property qualification, or that in relation to freehold, and so on. He trusted this course would be pursued, as it was obviously the most convenient.

Mr. Leigh said, that he had so understood the rule: All that it forbade, was the discussion and decision of any question of amendment, before it should have been submitted and considered in Committee of the Whole.

Mr. Stanard observed, that the resolution offered by the gentleman from Chesterfield, (Mr. Leigh,) would remove all difficulty on this subject. It includes in its provisions, a permission for new propositions being offered in Committee of the Whole. This was, indeed, the very end and purpose of that resolution: that the Committee of the Whole, in this Convention, might have the same liberty in this respect, as belonged to a Committee of the Whole, on the state of the Commonwealth, in the House of Delegates. He called for the reading of Mr. Leigh's resolution; and it was read accordingly.

On motion of Mr. Leigh, the Convention then proceeded to the Order of the Day, and went into Committee of the Whole, Mr. P. P. Barbour in the Chair.

The Chairman stated, that the subjects assigned to the Committee for its consideration, were the existing Constitution of Virginia, together with the several reports from the Select Committees, proposing amendments thereto, and such other amendments, as had been offered by individual members: the Committee were at liberty to take up any one of these subjects, in such order as might be determined on.

Mr. Doddridge observed, that the report from the Committee on the Legislative Department, would, he presumed, be generally considered at first in order of importance, among the reports before the Committee, from the nature of the subjects on which it treated. But, according to the form of the resolution under which the Committee had been appointed, *that* upon the Bill of Rights had precedence; and he therefore moved, that the report of the Select Committee on the Bill of Rights, be now taken up.

The motion was agreed to, and that report was thereupon read at the Clerk's table; and the question being on concurring with the Committee in their report, it was decided in the affirmative, *nem. con.*

So the report was concurred in by the Convention.

Mr. Powell now suggested; as a question of order, whether, as the report had declared, that the Bill of Rights needs no amendment, and the Convention had adopted that report, it was to be understood as precluding all *additions* to the Bill of Rights; and thereby shutting out the resolutions, which had, on Friday last, been submitted and laid upon the table, by his friend from Norfolk, (Mr. Taylor.)

The Chair replied, that, as the Convention had just decided, that the Bill of Rights needs no amendment, the propositions to amend it, whether by diminution, alteration, or addition, would be out of order.

Mr. Taylor said he was very unexpectedly called to address the Chair; he had had no expectation that the subject of the resolutions which he had had the honor to submit, would come up in any shape to-day; and so uninformed was he, as to the forms of parliamentary proceeding, as not to have apprehended that the rules of order would lead to such a decision as had just been pronounced by the Chair. It was not certainly for him to question that decision; but he should have apprehended, that when the Convention, by adopting the report of its Committee, had decided that the Bill of Rights needs no *amendment*, it had not in effect, said, that all *additions* were inadmissible. If, however, he was mistaken in the apprehension, he felt persuaded, that there existed in this body, a disposition that would lead it rather to consent to re-consider its vote, than, by insisting upon it, to exclude from consideration, resolutions, which, whatever might be their merit, referred to questions of the deepest importance. He asked, therefore, from the candour and generosity of the House, that they would consent to a re-consideration, with a view to let in the resolutions, he had had the honor to submit.

Mr. Johnson said, that perhaps he had misapprehended, either to what resolutions the gentleman referred, or else their true character. If they were those resolutions which he had seen printed in the papers, as offered by the gentleman from Norfolk, he could not conceive that they were at all excluded from the consideration of the Committee, by its having adopted the report in relation to the Bill of Rights. Those resolutions proposed an amendment, not to the Bill of Rights, but to the Constitution of Virginia. They pertained, as he understood them, to subjects reported upon by the Legislative Committee, and would be perfectly in order when the report of that Committee should be taken up for consideration.

The Chair observed, that it had expressed no opinion as to the *nature* or *tendency* of the resolutions, but had merely decided, that, if proposed as an *addition* to the Bill of Rights, they must be considered technically as an amendment to that instrument, and therefore out of order, inasmuch as the House had said the Bill of Rights should not be amended.

Mr. Doddridge now moved, that the report of the Legislative Committee be taken up and considered; and the motion was carried—Ayes 48—Noes 33.

Mr. Powell said, that he had thought there was a subject already before the Committee, viz: the question of re-consideration.

The Chair replied, that no express motion to that effect had been made, and the suggestion of the gentleman from Norfolk, had, as he understood, been waived in consequence of the remarks of the gentleman from Augusta.

Mr. Doddridge said, he had certainly so understood the matter, or he should not have made his motion: he trusted the vote would be re-considered.

Mr. Johnson said, that it was only necessary to lay the report of the Legislative Committee on the table; and he made that motion; which being agreed to, the report was laid upon the table accordingly. The vote, approving the report of the Committee on the Bill of Rights, was then re-considered, and the Bill of Rights itself was taken up, read at the Clerk's table, and afterwards read from the Chair by sections, for amendment.

No amendment being proposed by any other member of the Convention,

On motion of Mr. Campbell of Brooke, the resolutions offered on Saturday by Mr. Taylor were read, and the third resolution having been modified by the mover so as to read as follows: "Representation shall be uniform throughout the State," the whole were taken up for consideration in the following form:

1. *Resolved*, That the elective franchise should be *uniform*; so that, throughout the State, similar qualifications should confer a similar right of suffrage.

2. *Resolved*, That, among those entitled by the Constitution to exercise the elective franchise, there should be *entire equality of suffrage*; so that, in all elections, the suffrage of one qualified voter should avail as much as that of another qualified voter, whatever may be the disparity of their respective fortunes.

3. *Resolved*, That representation shall be *uniform* throughout the State.

4. *Resolved*, That as *individual suffrage* should be *equal*, without respect to the disparity of individual fortune, so an *equal number* of qualified voters are entitled to equal representation, without regard to the disparity of their *aggregate* fortunes.

5. *Resolved*, That in all pecuniary contributions to the public service, regard should be had to the ability of individuals to contribute; and as this ability to pay, from dis-

parity of fortune, is *unequal*, it would be unjust and oppressive to require *each* citizen to pay an *equal* amount of public taxes.

Mr. TAYLOR then rose and addressed the Committee in substance, as follows :

Mr. Chairman,—As the resolutions just read were offered by me, parliamentary usage requires that I should explain and defend them. I should enter on this duty, under the most auspicious circumstances, with great diffidence and embarrassment. The incidents, which have just occurred in the presence of the Convention, are by no means calculated to diminish these feelings. I do not affect not to have bestowed upon these resolutions the consideration which is due to their own intrinsic importance ; due to the intelligence of the body which I now address ; due to the deep influence which all that is done here is likely to have on the destinies of our country : nor can I forget that self-respect forbids me to lay before such an assembly a collection of crude, undigested thoughts. But I am taken by surprise, both as to the time and the manner in which this subject has been brought up, and have not, therefore, marshaled my ideas, humble as they are, in a manner to exhibit them as I could have wished them to appear. Nevertheless, I shall not shrink from the duty which I conceive to be enjoined upon me by every sentiment of manhood and patriotism ; but shall perform it to the best of my poor ability, with all the sincerity which the deepest conviction of their truth can demand, with the zeal which its great importance ought to inspire ; and, believe me, Sir, with all that deference, not of manner or of speech alone, but that deep deference of the heart which I ought to feel and to acknowledge, in the presence of such an assembly.

Sir, I will own frankly, that I have scarce any thing of reasoning or of argument to bring forward in support of these resolutions. This, I hope, however, will not throw any discredit upon them : for, I confess to you, it is the very circumstance which recommended them to my adoption. There are some truths, so simple and self-evident, that their most perfect demonstration is furnished by the terms of the proposition itself. Axioms, or self-evident truths, carry conviction to the human mind, the moment they are announced. And, it may be safely affirmed of all propositions which the wit of man can suggest, that the probability of their truth, is in an inverse ratio, to the reasoning and proof required to sustain them. Just in proportion as any affirmation approaches the axiomatic character, in that same degree is the range of argument in its support, limited and restrained. If the resolutions I have submitted have any merit, it lies in this solely : the principles they contain are so evident and obvious, that they neither require nor admit of argument to sustain them. What I have to say, therefore, is rather by way of explanation than of argument : believing, as I do, that this will constitute their sufficient defence and best apology.

I pray the Convention to recollect that the resolutions refer to two distinct objects ; the *elective franchise* and the *principle of taxation* ; and that their purpose is to give to these two great principles a constitutional consecration.

The principle of taxation, and the elective franchise, at all times most important, especially in a country of free institutions like ours, have now a peculiar interest, from their bearing on the great and paramount question, which occupies every head, and throbs in every heart in this Convention : I mean the question of *basis and apportionment of representation*. They are presented mainly with a view to their bearing on that object.

When I arrived here, my opinions on these subjects, were not formed : the only sentiment in my heart, was a most ardent and sincere desire to know what was truth, and when found, to pursue it. I sought light every where ; conversed with gentlemen of various and opposite opinions ; sought for facts in all directions, and listened to the reasoning which was founded on them, with the honest intention of giving due effect to both. But I confess to you, Sir, that as I proceeded, my own judgment became bewildered in this process. Nor is such a result at all surprising ; for, the mental, like the bodily vision, we all know, may be destroyed as well by the excess, as by the absence of light. My intellect, I own, was insufficient to take in so many conflicting and various principles, at a single glance ; still less was it able to pursue them, through all their multiplied and endless combinations ; least of all, was it capable of blending them into one mass, giving to each fact, and to each argument, its proper force, and deriving a result, which should be satisfactory to my own mind. Under circumstances so perplexing, I resorted to what I conceived to be the only remedy : one which rarely had deceived me : it was, to simplify, to disentangle this skein of fact and argument, to analyse the materials of which it was composed ; to search for principles ; to learn the reasons of them ; and finally, to draw a just conclusion, to the best of my humble capacity. The result is embodied in those resolutions : which, if they shall answer no other purpose, may at least furnish channels into which the thoughts and arguments of other gentlemen may be directed ; by which means the talent and intelligence of the House may be drawn out and concentrated. I certainly should not have offered them, had I not believed them true. But, Sir, I value truth more than consistency : I will, therefore, endeavour to subdue in my breast, that pride

of opinion, so natural to man; and am ready to abandon these resolutions the moment I shall be convinced of their fallacy. To have committed, and to have proclaimed, what shall afterwards prove to have been an error in judgment, is a venial offence; an offence, fully expiated by the mortification of confessing it (which I am ready to endure :) but to persist after the judgment is convinced of its error, is an unpardonable sin.

Four of the resolutions refer to the elective franchise: by the leave of the House, I will read them.

[Here Mr. T. read the first four resolutions.]

The Committee will perceive that all these several propositions grow out of one principle, and refer but to one object, the elective franchise, and the mode in which it is to be exercised. Permit me to preface what I have to say respecting them, by a very few general remarks.

All our institutions, whether State or Federal, in their character, are founded in the assumption of three political truths: 1. That a free Government is the best calculated to promote human happiness, if not universally in all countries and in all times, at least in the American States: 2. That the sovereignty resides, of right, and in fact, in the people: 3. That the best mode of administering Government is by agents, instead of the people personally. I shall not stay to enquire whether these assumptions be false or true: I do not indeed, for myself, hesitate to declare my unqualified belief that they are consonant with all the dictates of reason and of truth; and I believe that I express the sentiments of every individual in this Convention, when I make the declaration. But I allude not to these principles, either to justify or to condemn them; I only call the attention of the Committee to the fact, that all our institutions rest on these great principles of *Representative Republics*: Republican in this, that they repose the sovereignty solely in the people: *Representative* in this, that that sovereignty shall be exercised through the administration of agents, of representatives; and not personally, by the people. Nor is it my intention to enquire who are the people, in whom this sovereignty is supposed to reside? Some gentlemen think that they include every individual in the community, without regard to age or sex: others maintain that the people are, all who fight and pay; all who defend their country in the hour of peril, or contribute to supply its purse in "the piping times of peace:" while others, again, insist, that "people" means those only on whom the Constitution confers the right of exercising political power! (I used a wrong word; I will correct the language; I should have said not those *on* whom the Constitution *confers*, but *in* whom it *recognizes* the right of exercising political power.) Gentlemen may entertain as many different opinions on this point as they please; I meddle not with them now; the resolutions do not even approach these opinions. On the contrary, they pre-suppose that the Constitution has already determined by whom the elective franchise is to be exercised, and only attempt to regulate the mode of its action. The principle of the resolutions is as applicable to one *suffragan* (I know not if the term be strictly proper,) to one *voter*, as to another; and will be equally just, whether you shall adopt the plan of freehold suffrage, or any other, in its stead.

I have made these general remarks with a view of shewing that the elective franchise is an *essential* part of our system; that it furnishes the mode, and the only mode, whereby effect can be given to the principle of *representative administration*.

The elective franchise looks to two objects: first, the *persons* who are to exercise it; that is, *suffrage*: secondly, to the *effect of suffrage*; that is, *representation*.

Suffrage, then: shall it be *uniform throughout the State*? or shall it be *diverse in divers parts* of the State? so that, one man shall have a right in one part of the State, which, in circumstances exactly similar, shall not be enjoyed by another, in a different part of the State? This question, it is the purpose of the first resolution to settle. The Bill of Rights declares that all elections shall be free: I would farther add "and shall be uniform." Convenience recommends it. It will avoid the confusion of having different rules in different places; rules local and personal; instead of universal and uniform. Justice and equal rights require it. There can be no departure from the rules of uniformity, without conferring on some, immunities and privileges which are denied to others, in direct opposition to two other articles in this same Bill of Rights. The propriety of inserting such a resolution in your Constitution, arises from the fact, that the present Constitution has not so provided; but, on the contrary, establishes the very reverse. Its basis of representation, is the possession of freehold. In this, its rule may have been thought uniform; but there are portions of the State, in which the Constitution establishes a local rule, applying to that portion alone. In West Augusta, the existing Constitution recognized the right in "*landholders*" who were not freeholders. West Augusta, at the time the Constitution was adopted, comprehended a large extent of territory, from which many counties have since been formed. It then formed a barrier against Indian warfare; and their titles, founded on occupancy only, were held by the tenure of the rifle, and not by parchment. There were others, who were incapable of perfecting their title by the

existing law. In 1752, it was the policy of the Colony, to erect a barrier against the Indians, on our western frontier. With a view to this object, we invited within our boundary "*foreign Protestants*;" aliens, who could neither hold nor transmit lands. So, in the Borough of Norfolk, and in the City of Williamsburg, the right of suffrage was extended to individuals, in a manner different from what it is in the other portions of Virginia. These rights I hope to see extended to others similarly situated. The object of my resolution is, to remove these anomalies, and to establish *one law, and one rule*, for all who enjoy the privilege of voting at all. To establish such *uniform rule*, is the only object of the first resolution.

Suffrage being established, whether uniform or diverse, another enquiry presents itself of great delicacy and importance. What shall be the effect of suffrage? I mean not as it regards representation, but as *between the voters themselves*. Are all to be units? *all of alike value*? or, will you graduate the votes given? Will you regulate their value by the *excess of the property the voter may own, over and above the standard which you shall have erected*?

The resolution proposes, when you have fixed the qualification to be possessed by all voters, to make all the votes *equal*, without regard to *any disparity of fortune among the voters*: and I pray the House to indulge me, while I attempt the development of the principle I advocate, by a particular application of it. But I premonish the House, that I offer an explanation on this subject, not because I suppose there exists among us any diversity of opinion, as to creating this uniformity *within the same district*. My object is, to ascertain *principles, with a view to their ulterior application*. Imagine a county containing three hundred qualified voters; of these, two hundred and fifty vote for A; the remaining fifty vote for B? Tell me which ought to be the representative of that county? The question may seem strange. Yet the House will perceive, that the decision of this question depends upon another, viz: whether you will graduate the votes given by the *wealth of the voters*, or whether you will make *all the voters count as units, all of equal value*. For explanation? Suppose of the two hundred and fifty voters for A, each owns a freehold worth one hundred dollars, and that the fifty who vote for B, besides possessing this qualification, own besides, each a large estate, say worth one thousand dollars. If *numbers* are to elect, A is elected, by five to one: but, *if wealth is to elect*, if property is to be taken into view, not merely for the safety, but for the effect of elections, then B is elected; fifty thousand dollars is on B's side; but twenty-five thousand dollars on A's. If *numbers* elect, A is chosen, five to one; if *wealth*, then B is chosen, two to one. But, suppose you adopt a *compound ratio*, produced by multiplying wealth into numbers; what will then be the result? While A gets but twenty-five thousand two hundred and fifty, B gets fifty thousand and fifty. So that the result is still precisely the same; the effect is just what it would have been, if reference had been had to *wealth alone*.

Perhaps I may be told, this is a subject about which it is impossible for gentlemen to differ. Excuse me: it is the subject on which *alone* there is any great difference of opinion in the House. For the contemplated ratio, the *compound of numbers and taxation*, so earnestly insisted on as the *true basis of representation*, is *neither more nor less, however it may be disguised, than this very thing*. Let me imagine an argument on this subject. Let me suppose the question between A's right and B's to come up here, and you to be the umpires between them; and then let me endeavour to imagine the argument in behalf of B, (having fifty votes.) The advocates of B would tell you that Government was formed chiefly, if not solely, for the protection of property: That there is a natural, inherent enmity between capital and labour: That the contest is interminable between *persons and wealth*, (for, strip the subject of the mystification, by which it is usually surrounded, and labour and capital mean no more!) That the two hundred and fifty voters who voted for A, though individually honest, are, through the ignorance and infirmity of human nature, not worthy of being intrusted with political power: Will they not appeal to experience, and insist that that touch-stone has tried what the nature of man is, and has decided that when the *many* possess the power of exercising rapine upon the *few*, it has ever followed that they exercise such power and commit the depredation: That, if the Government were so constituted as to give the power of representation by numbers only, and so admit the two hundred and fifty to elect their representative, the effect would be, that as he would be bound to obey his constituents, the rapine would still take place, with this only difference, that it would be accomplished by the forms of legislation, instead of force, without any form at all: That there can be no guarantee against the effect: That the guarantee afforded by the power of law, the sanctity of the Constitution, and the force of moral principle, however they may be found sufficient for the protection of life and of reputation, prove totally inadequate as a safeguard for *property*: That the only effectual, only sufficient guarantee, is to give to the fifty votes for B more effect than the two hundred and fifty votes for A: That, in a word, the only *means of guarding property* is to place the *power of Government in the hands*

of those who possess most property? Would not these be the topics of argument by which the cause of B would be advocated on this floor?

It is not my purpose to fatigue the Committee or occupy its time by giving, in reply, the answers which might be adduced in A's behalf. This question is settled in the mind of every gentleman in the Convention: it is settled by the general sentiment of this nation: by the deep, the universal, and, I trust, the changeless feeling, which attaches us all to our free and happy institutions; a feeling which has its source in the conviction of *the equality they maintain among the citizens* of the Republic, and the *justice which flows from that equality*.

If I am right in this, can the House have any difficulty in adopting the resolution? What does it ask? Nothing but what, in the practical administration of the Government, already actually exists: But it proposes to give a *Constitutional sanction* to what does indeed *exist in fact*, but which the *Constitution does no where guarantee and secure*.

I pray you to refer to the existing Constitution. I say, that although *in fact* equality of suffrage does exist, it rests on *suffrance* merely. I wish it not only to exist, but to have a Constitutional consecration.

The only clause in the Constitution which bears upon the subject is this brief sentence: "The right of suffrage shall remain as it is exercised at present." I would not be hypercritical in examining this declaration; but to me it does appear to provide against *taking away* any rights already possessed and exercised, and not to regulate the equality of suffrage among the voters. All it prohibits is the stripping those of the right of suffrage, who now hold it: no more: it does not take from the Legislature the power of determining the relative effect of votes between the voters themselves. Yet, surely in a matter of such vital importance, nothing ought to be left to doubt and uncertainty. If the existing Constitution does what this resolution purports to do, all the effect of the resolution will be to confirm the declaration of the Constitution: but if it does not, then this resolution will supply the deficiency, and it is proper that the question should be settled now. Such are some of the considerations which unite to recommend the adoption of this resolution.

There are two others, the third and fourth, which have reference to *representation*; that is, to the *effect of the elective franchise, when exerted*.

The third resolution seems to be only a corollary from the first: it affirms, especially as now modified, nothing more than that the *uniformity* of individual suffrage shall be extended to its effect, that is, to *representation*.

The fourth resolution is nothing more than a corollary to the second. It is only the expansion and application of the same principle to representation, which is proposed to the voters themselves: i. e. that *representation* shall be *uniform*, that *like numbers shall confer like rights of representation, without regard to the disparity of fortune which may exist in the aggregate*.

One would think there could be no difficulty in admitting a conclusion like this. *Representation is but the effect of a number of suffrages*. If, then, the suffrages are all equal, it would seem perfectly plain that equal numbers of equal suffrages should produce an equal aggregate amount; and so equal representation. Would any gentleman here hesitate to adopt such a principle, except in a particular mode of its operation?

I stated a case supposed to exist in one county. Now imagine the same case to exist in every county. Is there any reason why fifty voters should outvote two hundred and fifty in one county rather than in another? Locality cannot alter right. If fifty voters are to do this in the county of Norfolk, then fifty voters should do the same in the county of Brooke; and in every other county in the State. There is no difference of opinion as to making the effect equal *within* any one county or district. On this, all are agreed. Where, then, does the difficulty arise in assenting to the principle? When you consider its operation not *within* any district, but between *different* districts, then only do gentlemen differ from me. But shall any one *district*, by any arrangement whatever, introduce a principle which *you all repudiate within a county*? Shall it give an effect to property when in extensive combinations, which is denied to property in a more limited field? Suppose you divide your district into three counties, containing each nine hundred voters. There is not one gentleman here who will hesitate to say, that a majority of qualified voters shall give the rule of election *within* each of these counties. But suppose, again, that in laying out your district boundary, you take the other rule, and say that property shall elect: what will the operation of such a principle be?

But the proposed compound ratio wholly disregards this principle of equality of right in the organization of districts. Let me illustrate this:

Three counties in Eastern Virginia, such as I have described before, are formed into a district, and the nine hundred qualified voters become entitled to one representative. In another part of the State, nine hundred other qualified voters claim similar representation. But it is found that in

the first district the nine hundred voters pay each say \$1 tax,	-	-	\$	900
And that there are one hundred and fifty persons among the nine hundred				
who pay beyond the others the sum of	-	-	-	600

Making an aggregate of taxes	-	-	-	\$	1,500
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The other nine hundred persons who claim a representative, are also (like					
the seven hundred and fifty of the first district) all qualified voters, and					
pay \$1 each,	-	-	-	-	900

Leaving a difference of	-	-	-	-	\$	600
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This difference is wholly produced by the superior wealth of the one hundred and fifty persons in the first district. To equalize the district, the compound ratio proposes to throw a qualified voter into the scale to counterbalance this wealth.

Thus, then, said he, one county will contain nine hundred men, the other fifteen hundred; you add six hundred *men* to make up for the *difference* of property. And is the evil less, because it is disguised? Disguise it as you will, this is not *equal representation*; and if the principle of all our free Republican institutions cries out against *fifty* men electing a candidate *against two hundred and fifty in a single county*, why not in more extended portions of the State? You give to wealth in a *district* a power you refuse to it in a county, though the district is but a collection of counties. While there, it lies dormant; exerts no power at all: but the moment you go beyond the county line, it then receives vigour and effect; I fear, a pernicious vigour, and an effect fatal to freedom. Pray, let me be understood. I disclaim, in these remarks, the least possible disrespect toward gentlemen, who differ from me in sentiment: but in my judgment it is an oligarchical principle; it gives the *minority* power to *control the majority*, although admitted to be *equal participants* in political power. And, if you would consider this as an oligarchical principle, if introduced into counties, I conjure you to consider how you give to wealth, when in large masses, what you refuse it in the elements of which those very masses are all composed. If the principle be wrong in itself, it is only the more dangerous from being concealed. The danger which I know, courage may enable me to brave, or skill to elude; but if the danger approach unseen, if it assails me unwarned and unprepared, it only the more certainly destroys. Masses of men act with an effect not in exact proportion to their numbers. The effect increases more rapidly than the number. A single grain of gunpowder may explode in a lady's *boudoir*, without producing any effect sufficient to wave one of her lightest plumes; but when aggregated masses of those grains are exploded, castles topple to their foundations, and towers fall before its irresistible power. Do not say the principle is harmless, because it operates on masses only: as you aggregate men into masses, instead of diminishing, you increase the mischief. I say that this principle, of giving the power to wealth, corrupts and vitiates the very persons it is intended to benefit. The safety of our free institutions, consists in the profound conviction of their justice and equality of operation. Destroy this conviction; weaken it; lead the people to doubt the salutary operation of those principles, and what will be the result? You have taken the first step in the downward road that has conducted all the free nations in the world, first to faction; then to convulsions; and finally to the sword, and a monarch, for protection. Oh, then, let no consideration induce us to weaken, in the slightest degree, that feeling of sacred regard towards free institutions, which is the best safeguard of their perpetuity. When you say, that nine hundred men in one district, and fifteen hundred men in another, shall have but the same representation in the Government, you bribe and tempt the honest simplicity of your fellow-citizens, to commit a fraud upon their brethren. You make them the instruments, willing instruments, if you please, by which the influence of property is brought to bear upon political power and civil liberty. Thus, you prepare them more readily to yield, whenever the influence of wealth, *within their own county*, shall advance its claims to the same power, it enjoys without the county line.

Men of property within all our counties, are deeply interested in this question. Let me remind such men, that the Chieftain in the border war who tempted their kinsmen and retainers, to pass the line and foray for spoil upon the land of their neighbours, destroyed their loyalty, corrupted their fidelity, lost their attachment; and at last have been actually compelled to pay *black-mail* to their own vassals for protection. We are all interested in preserving the great principles of Republican freedom: Men of property not less than others: It is to these principles that our most valuable institutions owe their being and preservation, and our people their national happiness.

Give me leave to ask of gentlemen one question. Representation; what is it? It is the effect of suffrage. Suffrage is the cause, representation the effect: Suffrage is the parent, representation only its offspring. What then ought to follow? What ought the relation to be between the cause and its result? What the similitude between parent and child? Should there be no family likeness? No correspondence between him

who represents, and him who confers the power of representation? Is there to be in the Delegate no principle of resemblance to the individual who sends him? Surely the representative is but the mirror, which, if true, throws back the just image of the *voters* who gave him his place. Representation, to be perfect, must throw back such an image of the *people represented*, in all their proportions, features, and peculiarities. I hope gentlemen will excuse me for a remark, which may not correspond with their views and feelings; but to me it appears inconceivable, how there can be a *representative* without *constituents*: and how can there be constituents, without power to delegate? How can a *man* be a constituent, and him he creates not be *his delegate*. Property cannot vote; it cannot delegate power; and yet we are told that it is to have a representative. The *voter* surely, and the voter only is the representative, when we speak of representatives.

I hope, said Mr. T. that the Committee will perceive, that I have had no other object hitherto but merely to explain the nature and the effect of the resolutions I have proposed; that I am offering but little argument; relying as I do upon their own intrinsic truth. I have purposely avoided all answer to the objections, which may be urged against them: and I am led to adopt this course by two considerations: First, my object in only explaining, is that the undivided attention of the House might be drawn to the principles themselves: but I have another reason; I thought it decorous, fair and honorable, to allow to gentlemen who differ from me in sentiment, the advantage of presenting their own views in their own form; that those views may produce their entire effect upon the House. If in the progress of debate, it shall become necessary, I may pray the House to indulge me in reviewing the most important objections, when they shall have been made; and in fortifying my original resolutions, if I shall be able. To my course in this respect, there is but one exception; and *that* has reference to the fifth resolution:

[Here Mr. T. read the resolution.]

It refers to *taxation*; and I will own that I introduced it in connexion with the other subjects for the purpose of asserting what the *true principle of taxation* is; but I combined this principle of *taxation*, with the resolutions respecting *representation*, to show that one should have no influence in regulating the other. The one looks to *property only*; the other to *qualified voters only*. In the resolution, a proposition is affirmed in the first member of it; then, a fact is affirmed; and the last clause is an inference from the two, though not in strict syllogistic form. Some may think the premises are false; but none will deny that it is *unjust to require each citizen charged with taxes, to pay an equal amount*. What would be the effect of such a principle? Evidently this; that in time of foreign war or domestic need, be the exigencies of the State what they may, no greater sum can be raised by taxation, than the amount which the very poorest man in the community is required to pay, multiplied by the total number of the citizens of the State. You can lay nothing more on the richest man, than on the poorest; if each is to pay an equal sum; and thus the wealth of its citizens would be totally useless and unproductive to the Commonwealth, though the Republic be in danger.

Whence does the obligation to public contribution arise? Whence but from the consideration that each individual is bound to pay to the public for the protection of his property. The Government itself, I mean by its moral as well as physical force, is in fact the underwriter of all the property in the community: and each individual should pay for the general protection in proportion to the risk incurred: that is, according to the amount of property he has to be insured. The principle is founded in the eternal nature of justice; which requires that contribution should be in proportion to the good received. I think that even if my resolution should be convicted of false logic, and that neither the *major* nor the *minor* members of the syllogism were true, and that the conclusion did not follow; still, the proposition itself, contained in the conclusion, must be acknowledged by all to be true and evident. None doubts the *fact*, that property is unequally distributed; nor do I see how any can deny the principle, that each man ought to pay to the State in proportion to his *ability to pay*. I do not say in proportion to his capital, or to the profits upon his capital; but in proportion to his "*ability to pay*." I put the proposition in the broadest terms: and in such a form as will apply to any system of political economy, gentlemen may respectively think fit to adopt.

If the ground I have taken, be tenable, then we have arrived at the true sources of representation and taxation; they are not two twin streams, which have their common source in the same distant glen; which chance may have separated for a time, and which afterwards re-unite: they issue from different fountains; flow to different oceans, and never can be united but by some power which perverts the object for which nature destined them. When you look to *representation*, you look to *men*: when you look to *taxation*, you look to the ability to pay, and to the *property* from which this payment is to be made.

Mr. Taylor concluded by a short peroration; apologising for the time he had occupied, disclaiming all intention to offend, and deprecating such an imputation; and professing his readiness to renounce his views as soon as convinced they were untrue. He then moved that the resolutions be received and added as an amendment to the Bill of Rights.

The question being on the adoption of the first of Mr. Taylor's resolutions,

Mr. Green of Culpeper, said, that he should vote against all the resolutions, although he approved of some of the principles they contained; and he should do so because he thought their proper place was not in the Bill of Rights, but, if any where, in the Constitution of the State.

Mr. Nicholas of Richmond, said, that he did not rise to discuss the resolutions which had been submitted, although there were various considerations in respect to them, which forcibly struck his mind. Any man who had turned his attention much to politics must know, that in those matters, there was no such thing as abstract truth. Political maxims were valuable, only as applying to the actual circumstances of the country, and must always be considered as in connexion with them. It would not do to apply principles, suited to one state of society, to a state of things entirely different. He understood the gentleman from Norfolk, as having said that he had brought forward these propositions with a view to settle the great question which the Convention was called to decide. Mr. N. said, he was unwilling to decide that question *in this way*. That question grew out of various considerations in the state of the country, and must be considered as applying to them. He was willing to admit the abstract truth of some of the gentleman's propositions; there were others of them which he should be disposed to deny, and the two were so far blended that he could not assent to the resolutions. It seemed strange to him, that instead of waiting for the discussion of the report of the Legislative Committee, the Convention was, at this stage of its proceedings, called to decide upon doctrines in the abstract, without any attempt at applying their practical bearing. If they were adopted and added to the Bill of Rights, their effects would all have to be discussed again, when the other report came before the Convention. *Cui bono?* why go over the same matters twice? Besides, the Bill of Rights was drawn up by some of the wisest, most virtuous and most patriotic men this country had ever produced; it was truly a noble production, and it declared truth so well, that he felt unwilling to add to it, or substitute another in its room. But, surely the Convention should not attempt to decide on so great a question; a question, which would go to produce an entire revolution in the condition of the State without knowing something more of the effects of their decision. The gentleman had much better reserve his resolutions, till the Legislative report should come up. He would not be excluded, and that opportunity would be a more fit one. Mr. N. said he should have said nothing, but observing, that no other gentleman seemed disposed to rise, he had given briefly the reasons which would induce him to vote against the resolutions.

Mr. Johnson moved to lay the resolutions upon the table, but professed his willingness to withdraw the motion, if any member of the Convention was desirous of submitting his views. He was satisfied some gentlemen would vote against the resolutions now, who would vote for them when they should hear their practical application discussed. The proper time for that discussion would be when the report of the Legislative Committee should come up for discussion.

Mr. Taylor observed in reply, that he had not the least objection that the resolutions should be laid upon the table: but the gentleman had thought this was not the proper time to discuss these principles. He differed entirely on that point, and considered this as the "accepted time." If gentlemen thought the resolutions should be acted upon at all, it should certainly be in connexion with the Bill of Rights. What was the object of the Bill of Rights? It was to settle the very abstractions, to which the gentleman seemed so averse; to settle principles; to set up certain landmarks for the framing of a Constitution. It prescribed the general rules which it was the purpose of the Constitution to develop and expand. Its use was to familiarise the people to a consideration of these great principles of free Government, and thereby to control the action of the Legislature. If the principles he had brought forward were right in themselves, and worthy of adoption in any form, it should be in the Bill of Rights. Let them stand there as touch-stones, to try with what fidelity the Constitution should be drawn, and the legislation of the State carried on under it. Gentlemen object to abstractions: the Bill of Rights declares all men to be born by nature, free and equal. Does the gentleman call that an abstraction? Why is it any more so, when by another declaration, the equality of men is stated, not as in a state of nature, but as in a state of political society? It was but carrying out the object of that instrument. He could not agree with gentlemen, who thought the proper time for fixing such principles, would be when the report of the Legislative Committee came up for consideration.

On motion of Mr. Johnson, the resolutions were then laid on the table.

On motion of Mr. Doddridge, the Convention proceeded to consider the report of the Committee on the Legislative Department of Government. The report was read at the Clerk's table, and the first section having then been read by the Chairman for amendment, as follows:

"*Resolved*, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively."

Mr. Green moved to amend it by striking out the word "*exclusively*," and adding in lieu thereof the words "*and taxation combined*."

And the question being on this amendment:

Mr. Green stated, there were some documents expected momentarily from the Auditor, which had a bearing on the amendment; and he therefore wished the action of the House suspended till they should be received; and he, thereupon, moved that the Committee rise.

It arose accordingly, and the President having resumed his seat, Mr. Barbour reported, that the Committee had, according to order, had the subjects referred to them under consideration, and had made some progress therein; but had come to no conclusion thereon.

And then the Convention adjourned till to-morrow, eleven o'clock.

TUESDAY, OCTOBER 27, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Parks, of the Methodist Church.

On motion of Mr. Scott, it then proceeded to the Order of the Day, and again went into Committee of the Whole, Mr. P. P. Barbour in the Chair.

And the question lying over from yesterday, being on the amendment proposed by Mr. Green of Culpeper, to the first resolution reported by the Committee on the Legislative Department of Government, viz: To strike out the word "*exclusively*," in the resolution, (which declares "that in the apportionment of representation in the House of Delegates, regard should be had to the white population *exclusively*,") and insert in lieu thereof, the words "*and taxation combined*."

Mr. Green observed, that he had proposed this amendment with a view to bring up the whole subject for discussion; so that both sides of the great question in relation to the basis of representation, might be before the Committee: and it was under the impression that the whole field being thus opened, some gentleman would enter upon the subject, by stating the grounds on which it was desired to introduce a new principle of representation into the Constitution. He now hoped that some gentleman, who was friendly to the change, would present to the Committee his views.

After a short pause,

Mr. Leigh of Chesterfield, said, that he did hope that the friends of the proposition reported by the Legislative Committee, would assign their reasons in support of a plan which proposes, in effect, to put the power of controlling the wealth of the State, into hands different from those which hold that wealth; a plan, which declares that representation shall be regulated by one ratio, and contribution by another: that representation shall be founded on the white population alone, and contribution on a ratio double, treble, and quadruple in proportion. He hoped the friends of these new propositions, new at least in our State, if not new throughout the world, would give to those who differed from themselves, some reasons in support of their scheme; some better reasons than that such principles were unknown to our English ancestors, from whom we have derived our institutions; better than the rights of man as held in the French school; better than that they were calculated in their nature to lead to rapine, anarchy and bloodshed, and in the end, to military despotism: a scheme, which has respect to numbers alone, and considers property as unworthy of regard. Give us, said Mr. L. some reasons; reasons which may excuse us in our own self-esteem, for a tame submission to this (in my opinion) cruel, palpable and crying injustice. Let us have at least some plausible reason; something which has at least the colour of reason, which may excuse us to ourselves: something which may gild the pill and disguise its bitterness: something to save us from the contempt of this present time, and the assured curse of posterity, if we shall betray their interest. Give us something which we may at least call reasons for it: not arithmetical and mathematical reasons; no mere abstractions; but referring to the actual state of things as they are; to the circumstances and condition of this Commonwealth; why we must submit to what I cannot help regarding as the most crying injustice ever attempted in any land. I call upon gentlemen for these reasons.

Mr. Cooke of Frederick, rose in reply.

Mr. COOKE said, that he could not but express his unfeigned astonishment, that the able gentleman from Chesterfield (Mr. Leigh) should have ventured to say to that assembly, that the principle of representation recommended by the Legislative Committee, was "new to him, and new in the history of the world." Can the gentleman have forgotten, (said Mr. Cooke,) that the principle which he treats as a novelty, and an innovation, is asserted in the "Declaration of the Rights of the people of Virginia?" And does he not know, that when the Convention of 1776 promulgated, in that instrument, the principles of Government on which their infant Republic was founded, they did but announce, in solemn form, to the people of Virginia, principles which had received, *a century before*, the deliberate sanction of the most enlightened friends of liberty, throughout the world?

Sir, the fathers of the Revolution did but *reiterate* those great and sacred truths which had been illustrated by the genius of Locke, and Sydney, and Milton: truths for which Hampden, and a host of his compatriots, had poured out their blood in vain.

Driven from Europe, by Kings, and Priests, and Nobles, those simple truths were received, with favour, by the sturdy yeomanry who dwelt on the western shores of the Atlantic. The love of liberty, aye, Sir, and of *equality* too, grew with the growth, and strengthened with the strength, of the Colonies. It declared war, at last, not only against the *power* of the King, but against the *privilege* of the Noble, and laid the deep foundations of our Republic on the *sovereignty of the people* and the *equality of men*.

The sacred instrument, for sacred I will dare to call it, notwithstanding the sneers which its very name excites in this assembly of *Republicans*, the sacred instrument in which those great principles were declared, was ushered into existence under circumstances the most impressive and solemn. The "Declaration of the Rights of the people of Virginia," was made by an assembly of sages and patriots, who had just involved their country in all the horrors of war, in all the dangers of an unequal contest with the most powerful nation on earth, for the sake of the noble and elevated principles which that instrument announces and declares. For the sake of those principles, they had imperilled their lives, their fortunes, their wives, their children, their country; and, in one word, all that is dear to man. For the sake of those principles, they had spread havoc and desolation over their native land, and consigned to ruin and poverty a whole generation of the people of Virginia.

And for what did they make these mighty sacrifices! For wild "abstractions, and metaphysical subtleties!" No, Sir. For principles of eternal truth; as practical, in character, as they are vital, in importance; for principles deep-seated in the nature of man, by whose development, alone, he can attain the happiness which is the great object of his being. Those principles are,

"That all power is vested in, and consequently derived from, *the people*."

"That all men are, by nature, *equally* free." And

"That a *majority of the community*" possesses, by the law of nature and necessity, a right to control its concerns.

These are the principles which the gentleman from Chesterfield regards as "wild and visionary;" as "abstractions and metaphysical subtleties;" and which are contemptuously styled by others, who think with him, "*mere abstract principles*." Passing by, without comment, the curious fact, that these "abstract principles" received but yesterday the sanction of an unanimous vote of this body (so far, at least, as a *nemine contradicente* vote can be called unanimous): passing by the fact, I say, that the resolution of a special Committee declaring that the Bill of Rights requires *no amendment*, was but yesterday adopted, without a dissenting voice, I will pause, for a moment, to enquire what these gentlemen mean by their favourite phrase, "*mere abstract principles*?" If I rightly apprehend the import of the term "abstract," when applied, in a *disparaging* sense, to any general principle, it means that the principle, though true, as *expressed*, is, nevertheless, expressed in terms so *general*, that when an attempt is made to apply it to any given subject, it is almost always found that the subject is included, not within the principle itself, but within one or other of those *exceptions*, which detract from the *universal* correctness of *all* general principles. That the principle is an unmeaning generality, and scarcely susceptible of application to the every-day business of men. In short, that it is wild, visionary and *unpractical*.

Let us see, then, whether the principles which are announced by the Declaration of Rights, as the "basis and foundation of Government," are of this wild and visionary character. Let us see whether they do not, on the contrary, come home to the "business and bosoms of men."

• It declares, then, in the first place, "that all power is vested in, and consequently derived from, *the people*."

Look to the situation and circumstances of those who made this declaration, to the occasion on which it was made, and to its bearing and operation on the existing insti-

tutions of Virginia, and then say whether it was not a *practical* principle, and one too, of great pith and moment. The colonies had long been smarting under the tyrannical exercise of power, *not derived from the people*: Under the exercise of power assumed, by the King and Parliament of Great Britain, *without the consent of the people*. Here, then, is a bold denunciation of this usurped authority; an abolition of kingly power; a declaration that *the people* of Virginia are the only *sovereigns* of Virginia, and that they would tolerate, in all time to come, neither foreign Parliaments, nor Kings, nor Cæsars. A declaration that the only legitimate Government, is a Government of *magistrates*, deriving their power *from* the people, and responsible *to* the people.

With whatever colour of plausibility this might have been called an abstract principle, in Europe, in the time of Locke and Sydney, who first maintained and supported it, thanks to the indomitable spirit of our ancestors, it became *practical* in Virginia, in 1776; was gallantly sustained through all the vicissitudes of the war, and received the sanction of royalty itself, at the peace which ensued. It was then that the slavish doctrine of the *jus divinum* of Kings, openly supported, but a century before, in the country from whence we sprung, received its *practical* refutation; and it might have been hoped, in Virginia at least, *its final doom*. From the period of the revolution *till the meeting of this Convention*, the doctrine "that all power is vested in, and consequently derived from, the people," was considered a *great practical truth*. Now, it is an "*abstract principle*," a wild and visionary speculation!

But again, Sir. The Bill of Rights declares, "that all men are, by nature, *equally free*." And this is considered an abstraction *par excellence*; the very abstraction of abstractions. It is even pronounced to be "absurd on the face of it," because it amounts, as it is said, to a declaration, that "all men, all women, and all children, are entitled to an equal share of political power."

I shall briefly examine this principle, Sir, in connexion with that which stands by its side in the Declaration of Rights, which is, in effect, that the sovereign power, the supreme control of its affairs, is vested in the majority of every free community. And I hesitate not to say, that taken in connexion, and they *must* be taken in connexion, they are so far from being speculative and abstract truths, much less absurd speculations, that they constitute in fact, a compendium of the whole law of rational and practical liberty, and were peculiarly appropriate and practical in their application to the actual condition of Virginia. Taking first the insulated proposition, that "all men are, by nature, *equally free*;" I pronounce it to be a great practical truth; a self-evident proposition; the primary postulate of the science of Government. Sir, what does this proposition mean, but that no *one* man is born with a natural right to control any other man; that no one man comes into the world with a mark on him, to designate him as possessing superior rights to any other man; that neither God nor nature recognize, in anticipation, the distinctions of bond and free, of despot and slave; but that these distinctions are artificial; are the work of man; are the result of fraud or violence. And who is so bold as to deny this simple truth?

But is it a mere "*abstract*" truth? Was it not, when declared by the authors of the Declaration of Rights, replete with *practical* meaning? What was their actual situation? The Government of England, against which this principle was directed, was incumbered with privileged orders; there was the King with his *hereditary prerogative*, and the noble with his *hereditary privilege*. The colonists had found, to their cost, in the earlier stages of their struggle, that *prerogative* and *privilege*, derived from birth, were the sworn and mortal foes of liberty. In announcing and reinstating the original *equality of men*, they declared war against both, and from that time, neither privilege nor prerogative derived from birth, have been tolerated in the Commonwealth which they established. And is there nothing practical in this? Is this a mere abstract principle; a mere "*metaphysical subtlety*?"

But it is said, that if it be true that "all men are by nature *equally free*," then all men, all women, and all children, are entitled to equal shares of political power; in other words, that they are all entitled to the right of suffrage, which is, practically, political power.

Sir, no such absurdity can be inferred from the language of the Declaration of Rights. The framers of that instrument did not undertake to write down in it all the rules and all the exceptions which constitute political law. They did not *express* the self-evident truth that the Creator of the Universe, to render woman more fit for the sphere in which He intended her to act, had made her weak and timid, in comparison with man, and had thus placed her under his *control*, as well as under his protection. That children, also, from the immaturity of their bodies and their minds, were under a like control. They did not say, *in terms*, that the exercise of political power, that is to say, of the right of suffrage, necessarily implies *free-agency* and *intelligence*; free-agency, because it consists in *election* or *choice* between different men and different measures; and *intelligence*, because on a *judicious* choice depends the very safety and existence of the community. That nature herself had therefore pronounced, on women and children, a sentence of incapacity to exercise political power. They did

not say all this; and why? Because to the universal sense of all mankind, these were self-evident truths. They meant, therefore, this, and no more: that all the members of a community, of mature reason, and free agents by situation, are originally and by nature, *equally* entitled to the exercise of political power, or a voice in the Government.

But at the same time that they recognized and expressed the general principle, the general right, they recognized and *expressed* a limitation of that general right imposed by *nature* and *necessity*. In affirming and declaring the *jus majoris* to be the law of all free communities, they did but declare the simple and obvious truth, that the essential character of a free Government, of a Government whose movements are regulated by numbers, involves the *necessity* of a submission by the *minority* to the *majority*. For the right of deliberation and *election* necessarily involves some *decision* between the men or the measures which are the subject of deliberation and election. All deliberation must come to a close, and every exercise of the right of election must terminate in a choice. To bring deliberation to *some* close, and election to *some* choice, it must of necessity be adopted as a rule, either that the majority or the minority must put an end to the deliberation, by pronouncing a decision: And the necessity of adopting the rule that the majority shall so pronounce, is founded on the necessity of a *sanction* to every law, on the fact that the majority possesses, in its superior physical force, that *sanction*, and on the certainty that it would not permanently submit to the opposite regulation. I say, *permanently*: Because, though the majority may be deluded for a time, by the artificial and vicious institutions of society, into a submission to the voice of the minority, they will arise, at last, and assert and enforce their natural superiority.

Neither did the framers of the Declaration of Rights carry out the *jus majoris* into certain other plain and obvious results: for they were not writing a treatise on political law, but merely announcing, in a brief and compendious form, its leading principles. They declared, for example, that the majority of every community has a right to adopt such a form of Government, and such a fundamental law, as to them seems best. They left unexpressed the plain and obvious propositions, that in forming that fundamental law, the majority have a right to act, and ought to act, on the principles, that the safety of the people is the supreme law; that the legitimate object of all Government, is to promote the greatest happiness of the greatest number; and that the perfect and entire protection of life, property, and personal liberty, constitutes the essential basis of the greatest happiness of the greatest number. That to effect these essential objects, the majority have a perfect right to prescribe, by a fundamental law, still further limitations to the universality of the right of suffrage. That they have a right to exclude, and ought to exclude, by their fundamental law, from the exercise of the right of suffrage, all those, who in the honest and deliberate opinion of the majority, cannot *safely* be entrusted with the exercise of it; or in other words, all those whose exercise of this right would be, in the honest and deliberate opinion of the majority, incompatible with the safety and well-being of the community, which is the supreme law. They did not set down, in express terms, all these distinct and consecutive propositions. But they *did* state the result to which they lead, when they said, in effect, that, in a well regulated community, those alone should be permitted to exercise the right of suffrage, who have "a permanent common interest with, and attachment to, the community."

I say, then, Sir, with a confidence inspired by a deep conviction of the truth of what I advance, that the principles of the *sovereignty of the people*, the *equality of men*, and the *right of the majority*, set forth in the "Declaration of the Rights of the people of Virginia," so far from being "wild and visionary," so far from being "abstractions and metaphysical subtleties," are the *very* principles which alone give a *distinctive* character to our institutions, are the principles which have had the *practical* effect in Virginia, of abolishing *kingly power*, and *aristocratic privilege*, substituting for them an elective magistracy, deriving their power *from* the people, and responsible *to* the people.

But it has been said that the authors of the Declaration of Rights themselves, admitted, in effect, the abstract and *impractical* character of the principles which it contains, by establishing a Government whose practical regulations are wholly inconsistent with those theoretical principles. That while, in the Declaration of Rights, they asserted that all power is vested in *the people*, and should be exercised by a *majority* of the people, they established a Government in which *unequal counties*, expressing their sense by the representatives of a *selected few* in those counties, to wit, the *freeholders*, were the real political *units*, or essential *elements* of political power. That the right of the majority, in this frame of Government, was violated in two different modes: First, by vesting the power, within each county, in the freeholders, who are a minority of the people; and next by investing small masses of people in the small counties, and large masses in the large counties, with equal power in the Government.

Sir, the argument would be a good one if the premises which support it were correct. But it is *not true* that the authors of the Declaration of Rights *established* the anomalous Government under which we have lived these fifty years and more. There can be no grosser error than to suppose that the Constitution of Virginia was *formed* in 1776. Its two great distinctive features, the *sectional*, and the *aristocratic* had been given to it a century before. The *equal representation of the counties*, which was the remote cause of its sectional character, was established, in 1661, by a General Assembly representing a population residing exclusively in the tide-water country, and consequently, at that time, homogeneous in character and identical in interest. The *limitation of suffrage to freeholders* which gave to it an aristocratic character, was imposed on the Colony in 1677, without any act of Assembly, by a letter of instructions from the King of England to his Governor in Virginia, backed and enforced by two regiments of British soldiers, who had been sent to the Colony for the express purpose of suppressing a popular insurrection. At the æra of the revolution, then, these two provisions had been the constitutional law of the Colony for more than one hundred years. The freeholders had learned to pride themselves on their superior power and privileges, and the smaller counties on their equality with the larger. The body of the people were reconciled by habit to their actual condition.

What, then, was the situation in which the framers of the Constitution were placed?—While they framed that instrument they were almost within hearing of the thunder of hostile cannon. The invader was at the door. They were in continual danger of being driven from the very hall of legislation by the bayonets of the enemy. The whole undivided physical force of the country was barely sufficient to defend it against the superior force of a foreign enemy. It was utterly *impossible*, under such circumstances, to pull down, and erect anew, the whole fabric of Government. And it would have been to the last degree unwise and impolitic, at such a fearful crisis, to distract the minds of the people by attempting a new distribution and arrangement of political power. It would have been the very height of folly, at such a crisis, to create disaffection in the minds of the *freeholders*, by stripping them of their exclusive powers, and to exasperate the smaller *counties* by degrading them from the rank which they had held under the royal Government. In leaving the *freeholders* and the *counties* as they found them, the framers of the Constitution bowed to the supreme law of necessity, and acted like wise and *practical* statesmen. Weak and unstable, then, is the argument which infers the *unpractical* character of the principles contained in the Declaration of Rights from the inconsistency of the actual Government formed, with those principles. The very language resorted to in disposing of a subject of such vital importance as the regulation of the right of suffrage, the brief and summary way in which it is disposed of, would shew, in the absence of all other evidence, that it was a subject which the framers of the Constitution *scarcely dared to touch*.—"The right of suffrage shall remain as at present exercised."

No, Sir, it was not reserved for *us* to discover the inconsistency between their theoretical principles, and their practical regulations. They saw it themselves, and deplored it. In the very heat of the war which was waged for these "abstractions"—in the hurly-burly of the conflict, *one* statesman, at least, was found, to point out those inconsistencies, and to urge home on the people of Virginia the "new and unheard of" principle, that in the apportionment of representation, regard should be had to the white population only. As early as 1781, Mr. Jefferson exhorted the people of Virginia, in the most earnest and impressive language, to reduce the principle to practice, "so soon as leisure should be afforded them, for intrenching, within good forms, the rights for which they had bled."

From that time to this, the spirit of reform has never slept. From that time to this, the friends of liberty have continually lifted up their voices against the inequality and injustice of our system of Government. Incessantly baffled and defeated, they have not abandoned their purpose; and after a struggle of fifty years, that purpose seems at length on the eve of accomplishment. The Representatives of the people of Virginia have at length assembled in Convention, to revise the Constitution of the State. A special committee of this Convention has recommended, among other measures of reform, the adoption of a resolution,

"That in the apportionment of representation, in the House of Delegates, regard should be had to white population exclusively."

It is this resolution which has called forth the denunciations of the gentleman from Chesterfield. It is this proposition, "new in the history of our Government, if not throughout the world; new certainly to him," which he calls on us to support.

Sir, I have ventured to assert, in the commencement of the remarks which I have had the honour to address to the Committee, that this proposition, so far from being "*new and unheard of*," is but a reiteration, a practical enforcement, of those principles of political law which were solemnly announced by the fathers of the revolution, in that noble paper, the "Declaration of the Rights of the people of Virginia, which

rights do pertain to them and their posterity, as the basis and foundation of Government." I proceed to redeem the pledge.

The Bill of Rights declares, that *the people* are the only legitimate source and fountain of political power.—The resolution of the Committee affirms this doctrine, by proposing, that in apportioning representation, or political power, regard shall be had to *the people* exclusively. Not to wealth, not to overgrown sectional interests, not to the supposed rights of the counties; but to the white population; to *the people* only.

The Bill of Rights asserts the political equality of the citizens.—The resolution proposes to give to that principle a practical existence in our Government, by abolishing the inveterate abuse of the *equal* representation of *unequal* counties, and equalizing, as nearly as may be, the electoral districts throughout the Commonwealth, on the basis of free white population alone.

The Bill of Rights pronounces the *jus majoris* to be the law of all free communities, by attributing to the majority of a community, the power to reform, alter or abolish, at its will and pleasure, the very Government itself, and consequently the lesser power of deciding, without appeal, in all matters of *ordinary legislation*.—The resolution proposes to give practical effect to the *jus majoris*, by making each Delegate the representative of an *equal number* of the people, so that the voice of a majority of the Delegates, will be the voice of a majority of the people. It proposes, in short, to establish that beautiful harmony between our theoretical principles and our practical regulations; the want of which, has been, for fifty years, the reproach of Virginia.

The resolution of the Committee, then, proposes no new and unheard of scheme; no innovation on the established principles of our Government. It calls on you to listen to the warning voice of the fathers of the revolution, who, in this despised "declaration," have told you, "that no free Government, or the blessings of liberty, can be preserved to any people, but by a frequent recurrence to fundamental principles."

But the accordance of the resolution with these great fundamental principles, has not obtained for it, the approbation of the gentleman from Culpeper, (Judge Green.) He proposes to amend it by striking out the word "exclusively," and adding the words "and taxation combined;" so that the resolution, as amended, would be,

"That in the apportionment of representation in the House of Delegates, regard should be had to white population *and taxation combined*."

It will be perceived, at once, that the object of this amendment, is to substitute for the principle of representation contained in the resolution of the Committee, one of a totally new and different character. It proposes a mixed or compound basis of representation, the elements of which are *property* and *people*, in lieu of the simple basis of *people only*. For the total amount of *taxation* does, and must, bear a just proportion to the total amount of *property*, the possession of which constitutes the ability to pay. The direct tendency, then, of this amendment, is to give political power to the wealthy in proportion to their wealth, and to inflict political insignificance on the poor in proportion to their poverty. To confer on an electoral district, containing *few* electors but *great* wealth, equal power with another district containing *many* electors but *little* wealth. To give to the *few*, who are *rich*, a control over the *many* who are poor. So that if Stephen Girard, the great *millionaire* of the north, were to become a citizen of Virginia, and fiscal ingenuity could reach his abounding wealth, the direct or apparent operation of this amendment, would be to augment incalculably, the political power of the county he should select as his residence, while its real effect would probably, if not certainly, be, to confer all the accumulated mass of power, thus artificially produced, on Stephen Girard himself. If Richmond, in the vicissitudes of human affairs, should chance at a future day, to attain the opulence which is even now possessed by the commercial metropolis of the Union, the operation of the amendment would be, to give it uncontrolled power over the legislation of the Commonwealth.

But, Sir, without commenting further on the practical operation of the proposed amendment, let us apply to it the same test to which we have subjected the resolution of the Committee. Does it accord with the principles of the "Declaration of Rights;" with the principles to which the gentleman from Culpeper, in common with us all, has given, but yesterday, the sanction of his approving vote?

It will be perceived, on the slightest examination, that it violates, not one only of those principles, which I have mentioned, but *every one*.

1. It repudiates the doctrine that *the people* are the *only* legitimate source and fountain of political power, and that "all power is derived from the people," and makes property *one* of the sources of power, and declares it to be derived, in part, *from* property.

2. It denies the correctness of the principle, that all the electors in the Commonwealth are equal in political rights, by conferring on a *small number* of *wealthy electors*, congregated in one electoral district, the same power that it confers on a *large number* of *poor electors*, congregated in another electoral district.

3. It subverts the *jus majoris*, the third great principle alluded to, and which is, in fact, but a corollary from the first, that the sovereignty is vested in the *body of the people*, and substitutes for it the control of the wealthy few; or in other words, the most odious, pernicious and despicable of all aristocracies—an aristocracy of wealth.

And for what purpose, I pray you, are we thus to dilapidate the very foundations of our free institutions?—For what purpose are we to make this retrograde movement in the science of Government, and in the practical institutions of our country, which should rather keep pace with the improvements of that science, and the march of intellect?—While human liberty is making a progress, which, though slow, is yet certain, even in countries where the *jus divinum* of Kings is still the prevailing doctrine, why should we alone run counter to the spirit of the age, and disavow and repudiate the doctrines consecrated by the blood of our fathers?—While most of the old, and all the new Republics of this extensive confederacy, are carrying out the principle of the sovereignty of the people to its full extent, why should we alone, seek to narrow, and limit, and restrain its operation?—What mighty good is to be attained by this abandonment of the principles of the revolution?

The members of this Committee, in general, are left to imagine the objects and views of the learned and distinguished gentleman who has proposed the amendment in question. For though parliamentary usage, so far as I understand it, imposed upon him the task of developing the principles of his amendment, and though we were regularly notified yesterday, in the manner in which such notices are usually given, that he would proceed, to-day, to the performance of that duty, he has pursued a different course, and the friends of the resolution reported by the Select Committee, have been invited, or rather challenged, by the gentleman from Chesterfield, to commence the discussion.

Having been myself a member of that Committee, however, and having heard the arguments by which the same amendment was there sustained, I will endeavor to perform the duty of the mover by stating, and my own by answering them.

It is alleged, then, Sir, that the principles of Government contained in the Declaration of Rights, I mean those elevated and elevating principles which, in an assembly of *Virginia Statesmen*, I have this day been compelled to defend, are little better than mere abstractions. That whether they are correct or not, as “abstract principles,” there is a great *practical* principle, wholly overlooked in the resolution of the Select Committee, of vital and *paramount* importance. The principle in question, and the argument by which it is sustained, when broadly and fairly developed, amount to this:

1. That the security of property is one of the most essential elements of the prosperity and happiness of a community, and should be sedulously provided for by its institutions.

2. That men naturally love property, and the comforts and advantages it will purchase.

3. That this love of wealth is so strong, that the *poor* are the natural enemies of the *rich*, and feel a strong and habitual inclination to strip them of their wealth, or, at least, to throw on them alone all the burthens of society.

4. That the *poor*, being more *numerous* in every community than all the classes above them, would have the *power*, as well as the *inclination*, thus to oppress the rich, if admitted to an equal participation with them in political power; and

5. That it is therefore necessary to restrain, limit and diminish the power of this natural majority; of this many-headed and hungry monster, the *many*, by some artificial regulation in the *Constitution*, or *fundamental law*, of every community. And if this be not done, either directly, by limitations on the right of suffrage, or indirectly, by some artificial distribution of political power, in the apportionment of representation, like that contained in the amendment, property will be invaded, all the multiplied evils of anarchy will ensue, till the society, groaning under the yoke of unbridled democracy, will be driven to prefer to its stormy sway, the despotic Government of a single master. And this is said to be the natural death of the Government of *numbers*.

Sir, if this statement of the argument be a little over-coloured by imputing to those who advance it epithets which they are too prudent to use, it is nevertheless, like all good caricatures, a striking likeness.

To this argument I answer that, like most unsound arguments, it is founded on a bold assumption of false premises. It is founded on the assumption that men are, by nature, *robbers*, and are restrained from incessant invasions of the rights of each other, only by fear or coercion. But, is this a just picture of that compound creature *man*? Sir, I conceive it to be a libel on the race, disproved by every page of its history. If you will look there you will find that man, though sometimes driven by stormy passions to the commission of atrocious crimes, is by nature and habit neither a wolf nor a tiger. That he is an *affectionate*, a *social*, a *patriotic*, a *conscientious* and a *religious* creature. In him, alone, of all animals, has nature implanted the feeling

of affection for his kindred, after the attainment of maturity. This alone is a restraint on the excess of his natural desire for property as extensive as the ties of blood that bind him to his fellow man. Designing, moreover, that man shall live in *communities*, where alone he can exist, nature has given to him the *social feeling*; the feeling of attachment to those around him. Intending that for the more perfect development of his high faculties, and for the attainment of the greatest degree of comfort and happiness of which he is susceptible, man should associate in *nations*, she implanted in him a feeling, the glorious displays of which have shed lustre around so many pages of his history. I mean the *love of country or patriotism*. Designing that he should attain to happiness through the practice of virtue, and in that way only, she erected in each man's bosom the tribunal of *conscience*, which passes in review all the actions of the individual, and pronounces sentence of condemnation on every manifest deviation from moral rectitude. To add sanctions to the decisions of conscience, she also implanted in his bosom an intuitive belief in the existence of an intelligence governing the world, who would reward virtue and punish vice in a future state of being. Man is therefore, by nature a *religious* creature, whose conduct is more or less regulated by the love or fear of the unknown governor of the Universe. Above all, the light of revealed religion has shone for ages on the world, and that Divine system of morals which commands us "to do unto others as we would have them do unto us," has shed its benign influence on the hearts of countless thousands, of the high and the low, the wise and the foolish, the *rich* and the *poor*. But we are asked to believe that all these natural feelings, all these social affections, all these monitions of conscience, all these religious impressions, all these Christian charities, all these hopes of future rewards and fears of future punishments, are dead, and silent, and inoperative in the bosom of man. The love of property is the great engrossing passion which swallows up all other passions, and feelings, and principles; and this not in particular cases only, but in all men. The poor man is fatally and inevitably the enemy of the rich, and will wage a war of rapine against him, if once let loose from the restraints of the fundamental law. A doctrine monstrous, hateful and incredible!

But, Sir, if I were even to admit, for a moment, the truth of the revolting proposition that the desire for property swallows up all the other feelings of man, does it follow that the aspirants after the enjoyments that property confers, will seek to attain their object in the manner which the argument in question supposes? If it be contended that man is a greedy and avaricious, it will, still, not be denied, that he is a reasoning and calculating, animal. When he desires to *attain* property it is in order that he may *possess and enjoy it*. But if he join in establishing the rule that the right of the strongest is the best right, what security has he that he, in his turn, will not soon be deprived of his property by some one stronger than himself? Sir, the *very* desire for property implies the desire to possess it *securely*. And he who has a strong desire to possess it, and a high relish, in anticipation, of the pleasure of enjoying it securely, will be a firm supporter of the laws which secure that possession, and a decided enemy to every systematic invasion of the rule of *meum and tuum*. In other words, man is sagacious enough to know that as a general and public rule of action, the maxim that honesty is the best policy, is the safest and best maxim. And when he deviates from that rule he always hopes that the violation will go undiscovered, or otherwise escape punishment. So true is this, that I am persuaded that if a nation could be found consisting exclusively of rogues and swindlers, there would not be found in the legislative code of that nation a systematic invasion of the right of property, such as the argument for the proposed amendment apprehends and seeks to provide against.

Communities of men are sagacious enough to know and follow their *real* interest. And, Sir, I do not, and cannot believe that it is, or ever was the real interest of any class in the community, or of any community to commit gross and flagrant abuses of power, to disregard the monitions of conscience, to break down the barriers and obliterate the distinctions between right and wrong, and thus to involve society in all the horrors of anarchy. The principles of justice are the foundation of the social fabric, and rash and foolish is he and blind to his true interest, who undermines the foundation and tumbles the fabric in ruins.

Thus far I have reasoned *a priori*. But what are the lessons which history and experience teach us, in pursuing this enquiry?—We need not go far for examples. Let us look at the experience of our good old Commonwealth of Virginia. From the foundation of the Commonwealth the slave-holding population of Virginia has held the supreme power in the State. From the foundation of the Commonwealth there has existed and there still exists, a numerous population on our western frontier, who are comparatively destitute of slave-property, and whose wealth has ever consisted in cattle more than in any other description of property. Now if the argument of those who support the proposed amendment be a sound one, it would follow that as it is and always has been the interest (according to *their* views of interest) of the slave-holding population to shift from themselves, and to lay on others, the burthens of

Government, they would impose heavy taxes on the cattle, the property of the helpless minority, and oppress them by this and every other species of fiscal exaction. And yet the very reverse is the fact. For the slave-holders, invested with supreme power, and urged to its exercise by their "*interest*," have not only not overtaxed the cattle of their western brethren, but have, in fact, imposed on them, except at one period of danger and distress from foreign war, no tax at all, and when the pressure ceased the law imposing the tax was instantly repealed. And why?—Because they were governed by the principles of justice, and the feelings of honour. Because they thought, and justly, that the people of the frontier, burthened as they were with "the first expenses of society," and engaged in laying the very foundations of the social fabric, could ill endure the additional burthen of a tax on their flocks and herds. Because the non-slave-holders of the west were at their mercy, and every feeling of honour and magnanimity forbade them to oppress the weak. I say, then, Sir, that the slave-holders of Virginia have shewn by their conduct in this particular case, the incorrectness of the theory which supposes man to be habitually governed by a blind and reckless cupidity; by the sordid feelings alone of his nature, to the exclusion of the nobler.

I say, then, that arguing *a priori*, or taking for our guide the conduct of the slave-holders of Virginia, we are led to the conclusion, that the property of the wealthy would not be imperilled, as gentlemen imagine, by entrusting the powers of Government to *numbers*, without regard to their wealth. That property would be abundantly secure, without investing its holders with a factitious power, derived from its possession. And that there is not the least necessity for the proposed innovation on the great principles of Government, asserted by our ancestors at the æra of the revolution.

But it is not in Virginia alone, that we see evidences of the futility of the apprehensions that are entertained for the safety of property. We have in the history of our Sister-Commonwealths, a rich fund of experience from whence we can draw arguments to illustrate the utter futility of these apprehensions. In *fifteen States of the Union*, representation is apportioned according to numbers alone, and wholly without reference to property, or the wealth of the electors. In eight of these States citizenship is the sole qualification of the elector, and in the remaining seven the payment of any tax, either local or general, is the only qualification superadded. The *numbers*, the needy *many*, have had the supreme control over the wealthy *few*, in some of those States for forty years, in some thirty, in some twenty, in some ten, and in some five. And what has been the practical result? Look at *their* situation, Sir, and look at *ours*. Do we not see among them the richest and most prosperous States of the Union? Has a single instance occurred of a Legislative invasion, by the poor, of the rights of the wealthy? Not one. The machine of Government has rolled smoothly on, and property has been found, as it ever will be found, able to protect itself, without *constitutional barriers* in the shape of *odious privileges*. So much for the *general question*, whether property is endangered by leaving the people in possession of their *natural and equal rights*.

But I know, Sir, incidentally, that the mover of this amendment entertains the opinion, that the case of Virginia is, from peculiar circumstances, a case *sui generis*. His opinion is that the comparatively non-slave-holding population of Virginia, must ere long constitute, if it does not now constitute, a decided majority of the people, and *that* majority inhabiting a particular section of the State, alienated from their slave-holding fellow-citizens, by distance, localities and dissimilar views on questions of general policy.—That it will be, or what amounts to the same thing, that they will suppose it to be, their interest to lay the burthens of Government almost exclusively on the slave property of their eastern brethren. And that it is, therefore, necessary to invest the slave-holding minority with *factitious power*, under the new Constitution, to enable it to protect itself against the injustice and oppression of the comparatively non-slave-holding majority.

Supposing the *facts* which I have just stated to be as he imagines them to be, I do not see any thing in the case stated, which takes it out of the operation of the principles of security which I have supposed to exist in regard to property in general. He *will not* contend that the people of the west are less operated on by the principle of honor, by sentiments of justice, and by a sense of their *real* interests, than the people of the east.—And if this be so, his fears are groundless. For the people of the east, under similar circumstances, have repelled the base suggestions of a sordid and short-sighted interest, and have been governed by nobler and more enlarged views of expediency and right. But, Sir, his premises fail him.—Look at the map of Virginia, and at the tables of population which have this day been reported by the Auditor. He estimates the white population east of the Blue Ridge of mountains, at 362,745, and the white population west of those mountains at 319,516. The people of the east have, therefore, a majority of 43,229 over those of the west. I need scarcely, Sir, tell this assembly, that the whole white population east of the Ridge is a slave-holding population. The black population is even more dense along the

eastern base of the Ridge, than along the shore of the Atlantic. For while the two senatorial districts bordering on the ocean, contained, by the Census of 1820, one of them but 17,416, and the other but 18,363, three of the districts along the eastern base of the Ridge contained, one of them 27,417, another 27,514, and the third 30,021. Thus you perceive, Sir, that the slave population is crowded up to the very foot of the mountain. But this is not all. The slave-holding population extends *beyond* the Ridge. The district which I have the honor in part to represent, contains about 12,000 slaves. The four western counties of Berkeley, Jefferson, Frederick and Botetourt contain 17,070. They are therefore, fairly to be considered as slave-holding counties, to the practical intent of being interested in exempting slaves from undue taxation. These four counties are estimated to contain, at present, a white population of 47,013. Add this slave-holding population, west of the mountain, (to say nothing of other western counties which contain slaves to the amount of several thousands more,) to the slave-holding population east of the mountains, and you have an aggregate of 409,758. The comparatively non-slave-holding population in all the remaining counties of Virginia, is but 272,503. There is, therefore, a majority of slave-holding population, amounting to 137,255.

And yet, strange to tell, an apprehension is entertained, that if representation be *equally* apportioned among the white population, slave property will be burthened by unequal and oppressive taxes!—If the resolution of the Committee be adopted, the slave-holding population will possess, in the House of Delegates, a majority of representatives in the proportion of 409,758 to 272,503; and yet a fear is entertained, that the representatives of the 272,503 non-slave-holders will overtax the property of the 409,758 slave-holders! And to avert this imminent peril and flagrant injustice, you are asked to invest the 409,758 with *fictitious Constitutional power*—to destroy the great landmarks of natural right, established at the æra of the revolution—to repudiate all the principles of Government which have been, until now, held sacred and inviolable. Such, Sir, is the argument by which the proposed amendment is supported.

Mr. GREEN said, it was with extreme diffidence that he rose to state his sentiments in support of the amendment. He was well convinced of his incapacity to do justice to the argument; but being urged by a sense of duty, he should make the effort, even though he might sink under it. The Committee were now apprised of what was to be urged as the foundation of the claim for a new basis of representation; they had been referred to the principles contained in the Bill of Rights. And according to the version of those declarations just given by the gentleman from Frederick, the declaration, that all men are by nature equally free, amounted to a declaration that every man in the community possesses, and ought to exercise, equal rights with every other man. And this was very true, if understood, as referring only to natural rights; but it was not true if applied, as the gentleman would wish to apply it, to rights of a political character. On the contrary, he hoped to shew that the Bill of Rights, so far from holding such a position, was explicitly opposed to it. The meaning of the declaration, as he understood, was this: that all men are by nature, so far equally free as that none might claim, in the social state, a natural right to govern others: this was the extent of the proposition: unless, indeed, they claimed to govern by the *jus majoris*, founded, as the gentleman contended, in the possession of physical force. To him, (Mr. G.) however, it seemed that there could arise no right from mere force. The gentleman from Frederick had determined, that because the majority possessed the physical force, they have, of course, the right to govern: but he thought that this did not follow.

Again, the gentleman had reminded the Committee, that the Bill of Rights declares that all power resides in the people. This was perfectly true; but it did not follow that the possession of the power of government by the people, gave to each member of the body politic equal weight in its government. Once more; the gentleman had contended, that according to the same Bill of Rights, a majority must govern in all things, and were of right entitled to supreme control. Such, no doubt, would have been the doctrine of the Bill of Rights, if the framers of that instrument had thought that its foundations were laid in the right of nature, or of conquest; and would have declared that to be the best Government which gives the most perfect effect to the will of the majority. Yet they do, in effect, instead of affirming this, deny it, by saying that Government being instituted for the security of the people, “that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration.”

The affirmation is not that the majority shall rule by absolute power, but that they may establish such a Government, as shall produce the greatest amount of happiness, and as shall best be guarded against the dangers of mal-administration. I admit, said Mr. G. that in a community, where all the members are in circumstances of equality as to fortune, and so situated, that no one part of the society can injure the residue, without, at the same time, inflicting equal injury upon themselves, the rule that the numerical majority shall govern, is the best; and the foundation of all our institutions, is

the assumption, that the people know, and will always pursue their own true interest; and, therefore, that a majority is likely to decide rightly. But, it is equally the principle of those institutions, that the majority have an *interest* in doing what is right. Unless this is taken for granted, the abstract proposition is of little value. Now, I ask of gentlemen, whether, in the peculiar situation of Virginia, circumstances will not present a strong inducement to the majority to oppress the minority for their own benefit?

My first proposition in support of the amendment is this: that it is perfectly certain that in a very short time, possibly within ten years, the majority of the free white inhabitants of this State will be found to the west of the Blue Ridge. A reference to the several enumerations of our population since 1790, will shew the grounds of this conclusion; a conclusion which is farther fortified by the report just received from the Auditor, and now in the hands of every member. In 1820, the difference of population between the eastern and western side of the Blue Ridge was near 100,000 in favor of the eastern side; now it is only 43,000. Thus, the western counties have experienced an increase in eight years, of more than 50,000 inhabitants: if such has been the ratio of gain in these eight years; it is not too much to believe that in ten years more, they will have a majority of the whole State.

The report of the Auditor makes the population of the Valley 10,000 more than I supposed: allowing for that difference (which is, as far as it goes, in favour of my argument.) The population west of the Alleghany mountains has increased in the same time 45,000; or about at the rate of thirty-six per cent. on its former population; while the Valley has increased 15,000; and putting both those divisions of the State together, their aggregate increase has been at the rate of twenty-five per cent. But what has been the rate of increase in the country *east* of the Blue Ridge? It has increased but by a ratio of four per cent!

Let us look, now, at the results of the system of taxation. The average amount of a capitation tax in the region west of the mountains was twenty-five cents per head: in the Valley, forty-eight cents: putting these two divisions of the State together, the average will be thirty-two cents. And what was it in the country *east* of the Blue Ridge? eighty-eight cents per head.

Look now at the *land* tax in these two grand divisions of Virginia; set slaves on one side. On the other side of the Ridge lands were taxed one dollar, while on this side they were taxed about two and a half: more than double.

From aggregate results go down to details: the same general result meets you still. During last war there was a tax on cattle in Virginia, (one of the articles which the gentleman has alluded to in his argument as more peculiarly pertaining to the western inhabitants) and even on cattle, more was paid on this side the mountain than on the other side. From all these facts, I am led to conclude that the existing inequality is likely to continue. If not, the amendment can do no harm. When there is no unequal taxation, it can do no harm to say that representation shall be regulated by taxation and population; for then it will result in the very thing the gentleman wants; he will have representation based upon the white population exclusively: or if it shall happen that the people of the west pay *more* taxes, then the effect will be to throw the weight of legislative power into that part of the State which now complains for the want of it.

The gentleman asks us, what *motives* the people of the west can have to misuse their power? I will state one inducement. They have one great object of desire, and the whole history of our State Legislature will prove it, and that is the construction of roads and canals. The desire of roads and canals has of late years grown into an enthusiastic passion among them. The whole of the country beyond the Ridge has passed those improvements by an unanimous vote, when they were proposed. The improvements on James River, in their extended form, were assented to solely for the benefit of the people of the west: a much more limited work would have answered all the ends and wishes of the people in the east of the State. A proposition was once before our House of Delegates to borrow three millions and about seven hundred thousand dollars for objects of this description, and every western man supported and voted for the scheme; nay, it was but last year that a loan of a million was brought forward, and, I believe, every western vote was given in the affirmative. Here, then, is an inducement, and here are actual efforts, to tax the lowlands for the benefit of western interests.

But it has been said that property has, and always will, protect itself. Sir, I admit that when property is unequally held by persons, all residing in one district together, and, therefore, having all one common interest, there may be truth in the position. But where it is dispersed in different and distant positions of the State, there is no such motive to restrain the attempts of those who have little common feeling with its possessors.

It has been farther said, that the restraints of conscience furnish an ample security; but, I believe, all political institutions, as well in this as in every other country, go on

the assumption that all men, when acting, especially in large bodies, are governed by a feeling of interest, and do with little or no scruple, whatever they suppose their interest to dictate. I consider it as a self-evident proposition.

On the subject of slaves, it is true that one purpose of the amendment, is to secure them from undue taxation. The gentleman tells us that those living on this side the mountain, have a majority of the slaves, and a majority in the Legislature, and will continue to have both. But it will be found that if any question shall arise in the Valley on that subject, almost all the voters there are destitute of slaves. In those four counties the one class is to the other as nearly three to one.

Let us, in the next place, look at the relative effect upon the general state of our affairs from the adoption of the resolution as it stands, and with the amendment. If the *white basis* shall be adopted, the people in the lowlands will never feel secure; jealousies and an interminable hostility will be generated, and perpetuate feuds and heart-burnings between different sections of the State. But if you adopt the *compound basis*, although, possibly, the people of the west may, for a time, be very angry, as considering themselves deprived of political weight and privileges, they never can feel themselves insecure as to their *property*; for no law can be passed in the Legislature affecting property at all, that will not be felt to a much greater extent on this side the mountains.

I have heard in various forms, (though not as yet in this Committee,) of adequate *guarantees*. For myself, I believe that we can have no adequate guarantee but in representation. A majority in the Senate alone, I consider as wholly insufficient; the larger number of delegates in the other House will always, in the course of two or three years, prevail in carrying any object they have at heart: they always overwhelm the Senate in the end. I shall not advert to the other guarantees that have been proposed: for I am unwilling longer to detain the Committee. I feel regret at having already been compelled to trespass on their time. Important facts were what I wished principally to present to them, and those I have stated are in my judgment entitled to great weight in the mind of every reflecting man.

Mr. Campbell of Brooke, said, that he did not rise for the purpose of making a speech; nor of attempting a reply to the speech he had just heard: but to offer a remark or two in relation to the order of the Committee's proceedings. Order he considered as the first law of heaven: but if he were to judge of its importance by what he saw here, he should conclude that this body were departing from it entirely; and, by a constant law of nature, they were incurring the penalty of such a course, for confusion and darkness were likely to accompany their proceedings. Yesterday the Committee had been occupied in the development of the grand principles which lay at the bottom of the science of government, and it seemed to be the understanding, that this Convention would have for its object to settle those fundamental principles, the sub-basis, as they might be termed, of the fundamental law of the community. Some very interesting remarks had, in that connexion, been submitted to the Committee. But the positions taken were treated as mere abstractions, and it was held that the proper course was to lay these aside, until the Committee should first have gone down to the practical details of Government. Now, for himself, Mr. C. said, he knew of nothing that could rightly be called a *principle*, that was not an abstract idea. Justice, goodness, truth, might be so called, and they were all abstract ideas. All the principles in science were abstract ideas. But in reviewing the course adopted, he perceived that it had been taken on this ground, that it was said to be inexpedient to settle principles first, for they were mere abstractions, and gentlemen must try their practical effect first, before they could espouse them. They must go to the practical part of Government, irrespective of principles. This doctrine had thrown the Committee into complete confusion. It had been then proposed to take up the first resolution reported by the Committee on the Legislative Department, and thereupon came in the amendment now under consideration. The amendment certainly threw the *onus probandi* on the gentleman who proposed it; but as the mover yesterday asked delay, the amendment had been laid over, and was now pending. The expectation of the Committee had been that some proof should have been adduced in its support; but the gentleman from Culpeper (Mr. Green) had opened the debate by declining to offer any, and both he, and the gentleman from Chesterfield (Mr. Leigh) called on the advocates of the resolution for arguments in its support. Certainly the burden of proof lay upon the gentlemen themselves. *Onus probandi incumbit affirmanti*. The gentleman from Culpeper had offered an amendment, which he affirmed ought to be added to the resolution in place of a word which he proposed to strike out. To call on the friends of the resolution for arguments, when the obligation to argue lay on the opposite party, was as great an aberration from the correct principles of order as that which had taken place yesterday. Either adopt the principles in the Bill of Rights as canonical, and base all your subsequent proceedings upon them; or, if those principles are considered as unsound, let them be modified or amended; or else let gentlemen propose other principles as a substitute for them. Let them give

us their principles distinctly and in numerical order, first, second, third, and so on: then, said Mr. C. we shall know where we are. In a word, I consider the order yesterday to have been "no principles;" that to-day seems to be "no proof."

The Chair having stated the question to be on the amendment of the gentleman from Culpeper, (Judge Green,) and the question being called for by several members,

Judge Upshur of Northampton, said, that it seemed to have been concluded by tacit agreement, that the debate was to be conducted by a member on each side alternately, and he considered that a convenient mode of proceeding. He felt disinclined to submit his own views at this time; and from the backwardness manifested by gentlemen on the opposite side of the question, (if, indeed, the Convention was to be considered as thus divided into *sides*,) he presumed they were taken somewhat by surprise, and were not now ready to submit their ideas. Instead, therefore, of carrying on the argument at present, with a view to give gentlemen time and opportunity for farther reflection, as well as that the order of discussion might be preserved, he thought it most fair and most expedient, that the Committee now rise; and he made that motion; but withdrew it at the request of

Mr. Mercer, who said, that he could not undertake to speak for other gentlemen; but he certainly could say, very confidently, as it respected himself, that the presumption just expressed by the gentleman from Northampton, was totally without foundation, viz: that the friends of the resolution reported by the Legislative Committee; in other words, the friends of the white basis, as it was technically and familiarly called, were not ready to reply: he hoped he might be permitted to say, that he was entirely prepared to reply, but was perfectly willing to rest the vote on the amendment upon the argument they had already heard.

Judge Upshur replied, that the gentleman from Loudoun mistook him if he supposed him to insinuate for a moment, that that gentleman, or his friends, were unprepared, in the sense he seemed to have supposed. He took it for granted, that gentlemen on that side of the question were all fully prepared to address the Convention, so far as familiarity with the facts and arguments pertaining to the subject was concerned: all he had meant to say was, that they did not seem desirous to proceed with the discussion on this day. He had rested his motion for the rising of the Committee, on the plan which seemed to have been agreed upon, of speaking alternately. He thought such a plan very fair, and on the whole the best course. If, therefore, it was not the intention of some of the gentlemen on that side to submit his views to the Committee, he hoped the Committee would rise: and he thereupon renewed his motion to that effect.

Mr. Mercer rejoined. If the gentleman from Northampton and his friends were not ready to speak farther in support of the amendment which they had brought forward, perhaps it would be better to pass it over for the present, and take up some other part of the report; but he hoped the House would not adjourn at so early an hour, and thus waste the residue of the day. For himself and those who acted with him, they were ready at any time to proceed.

The question being put on the motion for the rising of the Committee, it was negatived.

And the question then recurring on the amendment of Mr. Green, (viz. in adding the words "and taxation combined" to the first resolution of the Committee proposing the white basis of representation.)

Judge UPSHUR rose and addressed the Committee, nearly as follows:

I cannot say, Mr. Chairman, that I have been driven into this discussion without some degree of preparation. Yet I may be permitted to declare, that I did not anticipate that I should thus early be called on to submit my views to the Committee. It is true, Sir, that the few simple ideas which it is my purpose to submit, do not require a laboured preparation of any sort; but I should at least, have entered into the debate with more pleasant feelings, had not circumstances deprived me of the power of choosing my own time.

There seems to be some difference of opinion among us, as to the proper order of debate. A question has arisen whether the friends or the foes of the immediate measure before us, are bound to open the discussion. For my own part, I do not attach the slightest importance to that inquiry: to me it seems of no consequence whatever, whether the advocates of a compound basis of representation, or those of the popular basis, begin this discussion. I could have wished, so far as I feel any wish upon the matter, that the two parties should have addressed the Committee in alternate order; for this, it seems to me, would be at once, equitable and respectful, at the same time that it would best conduce to the elucidation of the subject. It was my wish that each party should be heard in turn; but it is still more my wish, that each should be heard with patience and candour, and answered in a spirit of kindness and respect.

For myself, Mr. Chairman, I trust that I have entered this body, without any feelings of local partiality or local prejudice. I entertain a deep conviction, that in the discharge of the solemn trust reposed in me, it is my duty to consider myself the re-

presentative of the whole State, and not of any peculiar part of it. I came here with an earnest, and an honest desire, to fix the foundations of Government with reference to the common welfare; and not upon the narrow basis of local interest. I brought with me also, another feeling; a feeling which is the result of long and mature reflection, and which I had hoped to make the guide of my conduct here. It appears to me impossible, that in a body like this, representing many differing, if not conflicting interests, any party can reasonably hope to carry all its measures. Nay, Sir, even if this were practicable, it admits of great doubt indeed, whether it would be in its results, either safe or wise. In a community like our own, no Government can gain the undivided affection, nor secure the undivided support of the people, unless it spring from a fair and equitable compromise of interests. It was therefore my earnest hope, that there would be no necessity for a formal array of parties upon this point. I have foreseen that we could not be much divided upon any other subject within the range of our duties; and it was therefore, peculiarly desirable, that on *this* subject, we should agree to meet on some middle ground. I was, and still am ready, to advance quite, nay, *more* than half way; for I feel entirely assured, that the great interests committed to our charge, require this temper in every one of us. Unfortunately, however, I have not found a single individual on the other side, who would agree with me in opinion.* I am therefore, driven to the necessity of relying on the strength of my own principles; and I shall attest the sincerity with which I entertain them, by the vote I am about to give.

It is contended by our opponents, that the proper basis of representation in the General Assembly, is white population alone, because this principle results necessarily from the right which the majority possess, to rule the minority. I have been forcibly struck with the fact, that in all the arguments upon this subject here and elsewhere, this right in a majority is assumed as a postulate. It has not yet been proved, nor have I even heard an attempt to prove it. It is for this proof that I was desirous to wait. Assuming this right as conceded, the whole scope of the argument has been to prove, that in the application of the right to the practical Government, we must of necessity, graduate political power according to white population alone. It may not perhaps, be more curious than profitable, to examine somewhat in detail, the grounds upon which this pretension rests.

There are two kinds of majority. There is a majority in *interest*, as well as a majority in number. If the first be within the contemplation of gentlemen, there is an end of all discussion. It is precisely the principle for which we contend, and we shall be happy to unite with them in so regulating this matter, that those who have the greatest stake in the Government, shall have the greatest share of power in the administration of it. But this is not what gentlemen mean. They mean, for they distinctly say so, that a majority in number only, without regard to property, shall give the rule. It is the propriety of this rule, which I now propose to examine.

If there be, as our opponents assume, an original, *a priori*, inherent and indestructible right in a majority to control a minority, from what source permit me to inquire, is that right derived? If it exist at all, it must I apprehend, be found either in some positive compact or agreement conferring it, or else in some order of our nature, independent of all compact, and consequently prior to all Government. If gentlemen claim the right here as springing from positive compact, from *what compact* does it spring? Not certainly from that Constitution of Government which we are now revising; for the chief purpose for which we have been brought together, is to correct a supposed defect in the Constitution, in this very particular. Not certainly from any other Constitution or form of Government, for to none other are we at liberty to look, for any grant of power, or any principle which can bind us. The right then, is not conventional. Its source must be found beyond all civil society, prior to all social compact, and independent of its sanctions. We must look for it in the law of nature; we have indeed been distinctly told, that it exists in "necessity and nature;" and upon that ground only, has it hitherto been claimed. I propose now to inquire whether the law of nature does indeed, confer this right or not.

Let me not be misunderstood, Sir. I am not now inquiring whether, according to the form and nature of our institutions, a majority ought or ought not to rule. That inquiry will be made hereafter. At present, I propose only to prove that there is *no original a priori* principle in the law of nature, which gives to a majority a right to control a minority; and of course, that we are not bound by any obligation *prior to society*, to adopt that principle in our civil institutions.

If there be any thing in the law of nature which confers the right now contended for, in what part of her code, I would ask, is it to be found? For my own part, I incline strongly to think, that, closely examined, the law of nature will be found to con-

* Judge Upshur takes great pleasure in acknowledging that he has learned, since the above remark was made, that there are some gentlemen on the other side, who have always been willing to meet any proposition of fair compromise. Their number however, is not large enough to authorise a hope that the measure could be carried, even with their assistance.

fer no other right than this: the right in every creature to use the powers derived from nature, in such mode as will best promote its own happiness. If this be not the law of nature, she is certainly but little obeyed in any of the living departments of her *empire*. Throughout her boundless domain, the law of force gives the only rule of right. The lion devours the ox; the ox drives the lamb from the green pasture; the lamb exerts the same law of power over the animal that is weaker and more timid than itself; and thus the rule runs, throughout all the gradations of life, until at last, the worm devours us all. But, if there be another law independent of force, which gives to a greater number a right to control a smaller number, to what consequence does it lead? Gentlemen must themselves admit, that all men are by nature *equal*, for this is the very foundation of their claim of right in a majority. If this be so, each individual has his rights, which are precisely equal to the rights of his fellow. But the right of a majority to rule, necessarily implies a right to impose restraints, in some form or other; either upon the freedom of opinion or the freedom of action. And what follows? Each one of three, enjoys the same rights with each one of four, and yet it is gravely said, that because four is a majority of the seven, *that* majority has a right to restrain, to abridge, and consequently, to destroy all the rights of the lesser number. That is to say, while all are by nature equal, and all derive from nature the same rights in every respect, there shall yet be a number, only one less than a majority of the whole, who may not by the law of nature possess any rights at all!

If, Sir, it be possible to carry our minds back to such a state of existence, let us suppose that the wild children of nature are for the first time, assembling together for the purpose of forming a social compact. Each one of them would bring with him all the rights which he derived from nature, and among these rights, would be found the right to say *whether a majority should rule him or not*. And, suppose a civil compact should be entered into by every member of the savage assembly, save one. Is that one bound by what the rest have determined? If he has originally a right to say whether he will agree to the compact or not, at what time does that right cease to exist, and by what authority is it taken away? *Until* the compact is formed, there is no majority in existence; and *after* it is formed, he is *no* party to it; and therefore not bound by its majority.

Again.—How is this majority to be ascertained? Who shall appoint the tellers, and who shall announce on which side the majority is? All these are necessary operations, without which the idea of a majority, is indeed, an “abstraction;” and yet these very operations presuppose a degree of order and arrangement inconsistent with a state of nature, and which cannot exist except in a state of society.

Again.—Within what limits is this majority to act? Is it a majority of the whole world, or only of a part of it? If of the whole world, then two millions of savages who range the forests of America, may prescribe the law to one million who inhabit the Asiatic Islands; two millions who live by hunting the elk and the buffalo with a bow and arrow, have authority to say that one million, among whom these animals of the chase may not be found, shall not draw their subsistence from the ocean which surrounds them! Is this the law of nature? Has the Creator really ingrafted upon the nature of man, a principle which gives sanction to such monstrous cruelty and injustice?

But suppose, instead of looking to the whole world, you limit your majority to particular districts of it. It is impossible to do this, according to any fixed rule, except by supposing that the world is divided into separate and distinct communities, possessing separate and distinct interests. And this is precisely what we understand by a state of society, as contradistinguished from a state of nature; and of course, the majority which is to be found there, is not the majority which the proposition supposes.

But again. If nature really gives this right to a majority; if as the clear-minded gentleman from Frederick (Mr. Cooke) supposes, there be impressed upon us by nature, a principle of this sort, which is mandatory upon us, and which we are not at liberty to disregard, in what does the right consist? Is it in mere numbers? If so, every creature must be counted, men, women and children; the useless as well as the useful; the drone who lives upon the industry of others, as well as the most profitable member of the human family. The law of nature knows no distinction between these classes, and indeed, one of the very postulates on which gentlemen rely, is that “*all* are by nature equal.” In point of rights, nature does not own any distinction of age or sex. Infancy has equal rights with mature age; and surely it does not consist with the gallantry of the present day, to say that the ladies are not at least the equals of ourselves. Nay, more Sir, nature as strongly disowns all invidious distinctions in complexion: in her eye, there is no difference between jet and vermilion. A distinction does indeed prevail here, Sir, and a wide one it is. But the same rule of taste would not answer in Africa; for the African paints the devil white. According to your rule of numbers, all these various classes and descriptions of persons must count. And if so, what estimate have gentlemen themselves put upon their

own rule? If in the estimate of numbers, all are counted, why exclude any from the right of suffrage? Why are not women, and children, and paupers, admitted to the polls? The rule, even if it *exists* in nature, is worth nothing, unless its fair analogies will hold in a state of society. And how can gentlemen venture to limit themselves to *white* population alone, and yet found their claim on a law of nature which knows no distinction between white and black? By *their* rule, we are entitled to representation of every slave in our land; and if they will give us this, we shall dispute with them no longer. The majority will then be with us. God forbid, Sir, that I should propose this seriously. I am as ready as any gentleman here, to disclaim every idea of the sort. I use the argument only to shew to what consequences this demand, founded on a supposed law of nature, must inevitably conduct us. Gentlemen may not claim the benefit of a rule, which will not bear to be pushed to its legitimate results; a rule which they themselves are compelled to abandon, at the very first step which they take into practical Government.

If then, there be no inherent virtue in *numbers* which confers this right, in what else does it consist? I have heard elsewhere, of another ground on which gentlemen have been pleased to rest it, and it is now distinctly announced by the able gentleman from Frederick. It is *physical power*. I do not understand the gentleman from Frederick in the objectionable sense, of which his language was probably susceptible. He did not mean that this power in a majority would or ought to be applied, in the actual Government; it is impossible to attribute to the clear head and sound principles of that gentleman, any meaning so uncourteous as a threat. I understood him, as he meant to be understood, in this sense only: Every law implies the necessity of some sanction; force is the only sanction in the case before us, and as this force is presumed to reside in the greatest degree, in a majority, it follows that a majority only can apply the sanction, and of course that a majority ought to give the law.

Here, Sir, we are under the necessity of looking back upon the preceding proposition. From what sources are we to derive this majority? I have endeavored to shew that by nature, all are equal and possess equal rights. Then women and children must be counted *here* also, as well as men. Now, we learn from good authority, that throughout the universe, the sexes rank to each other as thirteen and fourteen. Suppose then, the females to be all ranged on one side of the question, with a few children in their laps, and a few superannuated and decrepid men, at their sides. They may thus very well constitute a majority of the whole *number*; but will the *physical power* be with them? No Sir. That power has ever been found with personal strength, and intrepidity and skill. These qualities have at all times, and in all places, been an overmatch for mere undisciplined numbers. Here then is a case in which the majority do *not* possess the power of applying the sanction; and of course, the right to rule, which is supposed to follow the sanction, is in this case, with the *minority*. The case is quite as apt to occur, and quite as easy to be supposed, as that state of existence to which it refers, and from which gentlemen borrow their argument. And the necessary conclusion, upon the hypothesis assumed, is, that in one state of things a *majority* may have a right to rule, and in another state of things a *minority* may have that right; and this too, by the very same fixed and uniform law of nature!

To such absurdities are we inevitably driven when we attempt to apply principles deduced from a state of nature, to a state of society; a state which pre-supposes that nature with all her rights and all her laws, has been shaken off! Indeed, Sir, the whole reasoning is fallacious, because it is founded on a state of things which in all probability, never had existence at all. It goes back to a state prior to all history, and about which we know nothing beyond mere conjecture. The first accounts which we have of man, are of man in a social state. Wherever he has been found, and however rude his condition, he has been bound to his fellows by some form of association, in advance of a state of nature. If we may indulge any conjecture upon such a subject, the probability is that he was first urged into society, by a strong *feeling of property* implanted in his nature; by a feeling that he had, or at least, that he ought to have, a better title than another, to whatever his own labour had appropriated. The necessity of securing this right and protecting him in the enjoyment of it, in all probability, first suggested the idea of the social compact. Although property therefore, is strictly speaking the creature of society, yet a *feeling of property* was probably its creator. The result would be, that at the very moment that two human beings first came together, the social compact was formed. And gentlemen have fallen into another error also, of a kindred nature. They build their systems upon the notion of an abstract equality, for which there is no warrant in any thing we know of the history of man. Sir, I am about to use a borrowed idea; but it is valuable for its truth, and perfectly applicable to the subject. The first account that we have of man, is that contained in the Bible; and how will this notion of original equality stand, when tested by that orthodox book? Adam was the first of created beings;

Eve was created next; and the very fiat which brought her into existence, subjected her to the dominion of her husband. Here then was no equality. Cain was the first born of men, and at what period did he become the equal of his father? Was it at the moment of his birth, while he was yet scarcely conscious of his own existence, a helpless dependent upon the care of his parents? And if not *then*, at what age did this equality first attach? Was it at ten, or fifteen, or twenty-five, or thirty-five years of age? Where is the law, or the *doctrine* of nature, which enables us to say with certainty and precision, at what age the child becomes the equal of his father? Sir, the true meaning of the equality of men, as applicable to this subject, was happily expressed by the gentleman from Culpeper (Mr. Green) when he said that "all men are so far equal by the law of nature, that when they enter into a state of society, no one can claim a natural right to rule over another." And for the same reason, no ten men can claim a natural right to rule over any nine men.

The subject, Mr. Chairman, is scarcely worth the examination it has received. I will pursue it no farther, since I have no intention to give you a treatise on natural law, instead of an argument upon the practical subject of Government. I have thought it necessary to go thus far into an examination of the subject, because gentlemen have founded themselves upon what they are pleased to consider an axiom, that there is in a majority, an *a priori*, *inherent* and *indestructible* right to rule a minority, under all circumstances, and in every conceivable condition of things. And one of them at least has been understood by me, as referring this right to the law of nature; a law which he supposes, no society cannot repeal, and which therefore, is of original and universal authority. Surely this is a very great mistake. Nay Sir, there is proof enough before us that gentlemen themselves, who claim this right, and who seek to give it solemnity by referring it to the very law of our being, do not venture to carry it into the details of their own system. If there be a right in a majority of persons or of *white* persons, to rule a minority, upon what principle is it that the right of suffrage is restricted? *All* are counted, in making up the majority; and each one of the majority, ought of consequence, to possess a share in its rights. Why then do you not admit women to the polls? Nature has stamped no such inferiority upon that sex, as to disqualify it under all circumstances, for a safe and judicious exercise of the right of suffrage. And why exclude minors? Infants who have not acquired language, or whose intellects are not sufficiently unfolded to enable them to understand their own actions, may be excluded from the necessity of the case. But at what time, in the ordinary course of nature, do these disabilities cease? Gentlemen say, at the age of twenty-one years. And why so? Not certainly because nature declares it; for the faculties attain maturity at different periods, in different latitudes of the earth. In one latitude we are ripe at sixteen; in another, not until 30; and even among ourselves, we see many, under the age of twenty-one, who possess more wisdom and more power of general usefulness, than can be found in others of fifty; far more than in those who have approached their second childhood. What is there then, which indicates the precise period of twenty-one years, as the earliest at which these members of the ruling majority, may exercise the rights which belong to them? This, and this only: that the rule which is furnished by nature, is unfit for a state of society, and we are compelled, in our own defence, to adopt an arbitrary rule of our own, which is better suited to our actual condition. There is no one among us so wild and visionary, as to desire universal suffrage; and yet it is perfectly certain that, at the moment when you limit that right, in however small a degree, you depart from the *principle* that a majority shall rule. If you establish any disqualification whatever, there is no *natural necessity*, nor even a *moral certainty*, that a majority in any given community, will not come within the exception. And this state of things may by possibility, exist within every election district in the Commonwealth: and thus you establish a rule, with reference to the *entire body*, which is rejected in every *constituent member* of that body. Surely, gentlemen cannot claim the benefit of a principle, which will not bear to be pushed to its practical consequences; a principle which they themselves are obliged to desert as unwise, unsafe and impracticable, in the details of actual Government.

In truth, Mr. Chairman, *there are no original principles of Government at all*. Novel and strange as the idea may appear, it is nevertheless, strictly true, in the sense in which I announce it. There are no original principles, existing in the nature of things and independent of agreement, to which Government must of necessity conform, in order to be either legitimate or philosophical. The principles of Government, are those principles only, which the people who form the Government, choose to *adopt* and *apply to themselves*. Principles do not *precede*, but spring out of Government. If this should be considered a dangerous novelty in this age of improvement, when all old fashioned things are rejected as worthless; let us test the doctrine by reference to examples. In Turkey, the Government is centered in one man; in England, it resides in King, Lords, and Commons; and in the Republics of the United States, we profess to repose it in the people alone. The principles of all these Governments are essenti-

ally different; and yet will it be said that the Governments of Turkey and England are no Governments at all, or not legitimate Governments, because in them, the will of a majority does not give the rule? Or, will it be said, that our own Governments are not legitimate, because they do not conform to the despotic principles of Turkey, nor recognise the aristocracy of England? If there be these original principles at all, we must presume that they are uniform in themselves, and universal in their application. It will not do to say that there is one principle for one place, and another principle for another place. The conclusion resulting from the reasoning of gentlemen will be, that there is one Government in the world which is *really* a Government, rightful and legitimate; and all other forms of social compact, however long, or however firmly established, are no Governments at all. Every Government is legitimate which springs directly from the will of the people, or to which the people have consented to give allegiance. And I am not going too far, in asserting that Governments are free or otherwise, only in proportion as the people have been consulted in forming them, and as their rulers are directly responsible to them for the execution of their will. It matters not what form they assume, nor who are the immediate depositories of political power. It may suit the purposes of the people, as it once suited those of Rome, to invest all authority in a Dictator; and if the people choose this form of Government; if their interest and safety require that they shall submit to it, what original principle is there which renders it illegitimate? If the majority possess all power, they possess the power to *surrender* their power. And if it be just and wise that they should do so, it is still their own Government, and no one can impugn its legitimacy.

I have thus, Mr. Chairman, endeavored to prove, that there is not in nature, nor even in sound political science, any fundamental principle applicable to this subject, which is mandatory upon us. We are at perfect liberty to choose our own principle; to consult all the circumstances which attend our condition, and to mould our Government as our interests and necessities may require. We are now to ascertain what rule of representation, those interests and those necessities suggest, as wise, just and expedient.

I admit, as a general proposition, that in free Governments, power ought to be given to the majority; and why? The rule is founded in the idea that there is an identity, though not an *equality* of interests, in the several members of the body politic: in which case the presumption naturally arises, that the greater number possess the greater interest. But the rule no longer applies, when the reason of it fails. And here we should be careful to remember, that the question does not relate to the administration of an actual Government. It is not contended that the Legislature, when the Government shall go into operation, ought not to adopt the rule of a majority in acts of ordinary Legislation. The question before us, is prior to actual Government: it is not whether a majority shall rule in the Legislature, but of *what elements that majority shall be composed*. If the interests of the several parts of the Commonwealth were identical, it would be, we admit, safe and proper that a majority of *persons only* should give the rule of political power. But our interests are not identical, and the difference between us arises from property alone. We therefore contend that property ought to be considered, in fixing the basis of representation.

What, Sir, are the constituent elements of society? *Persons and property*. What are the subjects of Legislation? *Persons and property*. Was there ever a society seen on earth, which consisted only of men, women, and children? The very idea of society, carries with it the idea of property, as its necessary and inseparable attendant. History cannot show any form of the social compact, at any time, or in any place, into which property did not enter as a constituent element, nor one in which that element did not enjoy protection in a greater or less degree. Nor was there ever a society in which the protection once extended to property, was afterwards withdrawn, which did not fall an easy prey to violence and disorder. Society cannot exist without property; it constitutes the full half of its being. Take away all protection from property, and our next business is to cut each other's throats. All experience proves this. The safety of men depends on the safety of property; the rights of persons must mingle in the ruin of the rights of property. And shall it not then be protected? Sir, your Government cannot move an inch without property. Are you to have no political head? No Legislature to make laws? No Judiciary to interpret them? No Executive to enforce them? And if you are to have all these departments, will they render their services out of mere grace and favor, and for the honor and glory of the thing? Not in these money loving days, depend on it. If we would find patriotism thus disinterested, we must indeed, go back to a period prior to Bible history. And what are the subjects upon which the law-making power is called to act? *Persons and property*. To these two subjects, and not to one of them alone, is the business of legislation confined. And of these two, it may be fairly asserted that property is not only of *equal*, but even of *more* importance. The laws which relate to our personal actions, with reference to the body politic; which prescribe the duties which we owe to the public, or define and punish crime, are comparatively few in number, and sim-

ple in their provisions. And one half of these few find their best sanctions in public opinion. But the ramifications of the rights of property, are infinite. Volume upon volume, which few of us, I fear, are able to understand, are required to contain even the leading principles relating to them, and yet new relations are every day arising, which require continual interpositions of the Legislative power. If then, Sir, property is thus necessary to the very being of society; thus indispensable to every movement of Government; if it be that subject upon which Government chiefly acts; is it not, I would ask, entitled to such protection as shall be above all suspicion, and free from every hazard? It appears to me that I need only announce the proposition, to secure the assent of every gentleman present.

Sir, the obligations of man in his social state are two-fold; to bear arms, and to pay taxes for the support of Government. The obligation to bear arms, results from the duty which society owes him, to protect his rights of person. The society which protects me, I am bound to protect in return. The obligation to pay taxes, results from the protection extended to property. Not a protection against foreign enemies; not a protection by swords and bayonets merely; but a protection derived from a prompt and correct administration of justice; a protection against the violence, the fraud, or the injustice of my neighbor. In this protection, the owner of property is alone interested. Here, then, is the plain agreement between Government on the one hand, and the tax-paying citizen on the other. It is an agreement which results, of necessity, from the social compact; and when the consideration is fairly paid, how can you honestly withhold the equivalent? Indeed, gentlemen admit that property is entitled to protection; and that *our* property is entitled to it, when they offer us guarantees. I shall have occasion to speak of these by and by; at present I will only say, that although they are certainly offered in good faith, they would prove in practice, wholly unavailing.

Let us now inquire of *what kind*, this protection must be, if we would give it any value. I agree with the gentleman from Culpeper (Mr. Green) that it cannot be anything short of a direct influence in the Government.

There is one consequence, supposed to result from our doctrine on this subject, which all the gentlemen opposed to us, seem to contemplate with a sort of horror: "What," say they, "will you balance money against the bone and sinew of the country? Will you say that fifty men on this side of the mountain, shall be counted against one hundred and fifty on the other?"

Sir, no man supposes that property should be represented *eo nomine*; it would be grossly absurd to place a bag of guineas upon your table, and call it a constituent entitled to representation. We do not propose to represent money, but the *rights and interests which spring from the possession of money*. This is not a metaphysical refinement, an unmeaning distinction. It is easily comprehended, and it ought to remove every shadow of odium from our proposition, considered in this view. If men enter into the social compact upon unequal terms; if one man brings into the partnership, his rights of person alone, and another brings into it, equal rights of person and all the rights of property beside, can they be said to have an equal interest in the common stock? Shall not he who has most at stake; who has, not only a *greater* interest, but a *peculiar* interest in society, possess an authority proportioned to that interest, and adequate to its protection? I certainly do not mean to say, that the right of suffrage in the *individual* ought to be in proportion to his property; that if a man owning one thousand dollars is entitled to one vote, a man owning two thousand is entitled to two votes. I do not expect to be so understood after the admission which I have already made, in announcing the precise limit to which my proposition extends. Where there is an identity of interest, no difference should be made in the rights of the voter, in consequence of a difference in the extent or degree of that interest. But where there is *not* this identity; where there are different and *distinct* interests, existing in masses sufficiently large to form important objects in the Government, (as I shall presently show is the precise case before us,) there the rule emphatically applies.

The view which we are now taking, presents a sufficient answer to an argument urged the other day by the eloquent gentleman from Norfolk, (Mr. Taylor.) He told us that representative and constituent were correlative terms: that there could be no notion of a constituent without a power of choice, and that it would be absurd to attribute this power to a mass of metal. Sir, money is in no sense, the constituent. Man is the constituent, and money has no other concern in the matter, than to regulate and graduate the rights and powers, which man, the constituent shall enjoy and exercise. Such a constituent has more interest in the community than another, and therefore he has, a *natural* right, if gentlemen please; certainly a *just* right to a greater weight in the management of its concerns.

Here Mr. Upshur gave way for a motion of Mr. Taylor of Norfolk, that the Committee rise. The gentleman, he said, must feel exhausted, and it was not probable that he could finish his very able argument during the present sitting of the Committee:

with a view, therefore, to the accommodation of the gentleman, as well as to allow the Committee time for further reflection, he moved that it now rise.

The motion prevailed, the Committee rose, and thereupon the Convention immediately adjourned.

WEDNESDAY, OCTOBER 28, 1829.

The Convention met at eleven o'clock, and its sitting was opened with prayer by the Rev. Mr. Sykes, of the Methodist Church.

Mr. Fitzhugh, from the Committee on Compensation, reported, in part, as follows :

The Committee appointed to enquire into, and report on the compensation to be allowed the officers of the Convention, have agreed to the following resolution :

Resolved, That five dollars per day be allowed each of the Clerks of this Convention, for every day's actual attendance on said Committees. Which was agreed to by the Convention.

On motion of Mr. Doddridge, the Convention then proceeded to the Order of the Day, and again went into Committee of the Whole, Mr. P. P. Barbour in the Chair ; and the question still being on the following amendment, proposed by Mr. Green of Culpeper, to the first resolution, reported by the Committee on the Legislative Department of Government, which resolution reads as follows, viz :

Resolved, That in the apportionment of representation, in the House of Delegates, regard should be had to the white population exclusively, viz: to strike out the word "*exclusively*," and to insert in lieu thereof "*and taxation combined*."

Judge URSHUR continued his argument.

Mr. Chairman,—I have to express my acknowledgments to the Committee for the indulgence extended to me on yesterday ; an indulgence which I should not have asked, had it not been necessary.

And now, it may perhaps, be proper, before entering further into the discussion, that I should recapitulate, and I will do it in as few words as possible, the leading propositions which it has been my object to prove. And I do this only that the continuity of the argument, may be preserved in the minds of such gentlemen as may have been pleased to attend to it. I commenced with the broad proposition that there is no original, abstract, *a priori* right, in the majority of any community, to control the minority. That if such a right did exist at all, it must be either by positive agreement, or by the law of nature. As it was not pretended that it existed by agreement, I then endeavored to demonstrate that it was not derived from another and a higher source. I admitted as a general proposition, (an *abstract* proposition, if gentlemen prefer the term,) that it might possibly be a safe *general* rule, that the majority should govern. But here permit me to remark on the doctrine I subsequently advanced, that the allowing a portion of political power to property, does by no means violate that rule. This may perhaps appear somewhat paradoxical, but it is susceptible of proof, without going very deeply into metaphysics. The question is as to what time the principle shall apply. If it applies only after the Government has been established, then those who established the Government, have already determined in what form the right of the majority shall be exerted ; and, if they have said, that the majority which governs shall be constituted in part by wealth, and in part by the number of people, the rule, that the majority shall govern, is not violated. But prior to the existence of any Government, the question is, what rules it is *wisest* to adopt. I am willing to admit, that after the Government has been established, and put into operation, it is a safe and proper rule, that the will of a majority shall regulate the administration of its affairs ; but this admission leaves the question still open, as to the materials of which that majority shall be composed.

I further endeavored to prove, that it was a fair and just principle that property is entitled to protection : first, because it is an important constituent element of society ; without it, society could not exist for a moment, and if it did exist, could not move a single inch : Secondly, because, in the operations of Government, as they are concerned in legislation, the most numerous and most interesting class of subjects, on which the power is to be exerted, are all derived from property, and intimately connected with it. It must, therefore, necessarily receive protection, both in the form, and in the fundamental principles of Government, of which, property is always a part.

I will now proceed to the further development of this part of the subject. Sir, it is worthy of inquiry, in what the principles for which we contend differ from those, in defence of which, our ancestors of the American Colonies, felt themselves authorised to enter into that great and arduous struggle, by which they shook off the yoke of the mother country. What was, in the early days of the Revolution, the topic of

complaint, which filled every mouth, and troubled every heart in these Colonies? It was the attempt to tax the people of the Colonies, without allowing them any voice in the matter. Here, then, is our doctrine already established: a doctrine testified, at the utmost hazard, by all the people of this country, that those who pay the taxes, ought alone to have the power of imposing them. They declared it to be oppression of the very worst kind, that they should be compelled to pay a tax, while they had no voice in imposing it. But why was this doctrine any more true, when applied to America and England, than in its bearing on matters now before us? If it be a dictate of eternal justice, that those who pay a tax ought to have a voice in the imposition of it, why is it not as just now, and here, as it was then, and there? This is that protection which property claims, and insists upon: and which it has always enjoyed, under every Government, which has proved either lasting or wise. And why does it require this particular form of protection? In reply, I ask, when you lay a tax, by what rule is it to be imposed? By the ability of the taxed party to pay; and that ability is regulated by the extent of his property. But, who can ascertain the extent of that ability, but the party himself? What right has another to judge of it? What right has the man who owns no land, to say to his neighbour, "you own a large and splendid farm, well stocked with slaves; you ought to pay a tax of a thousand dollars?" Would you not call it very presumptuous in him to undertake to measure the extent and value of your property, and to fix the price at which you ought to purchase the protection of it from Government? Would you not reply to him, "you cannot tell the labour, care and anxiety, attending the possession of this property, nor form any idea at what cost it is, that I derive the little income I receive from this soil. You do not know how small that income is; and would, no doubt, be surprised to learn, that splendid as it seems to you, it does not yield me one half the sum at which you say it ought to be taxed?" And would not this be a fair answer? It is an admitted principle, that property must pay for its own protection; but who can tell what that protection is worth, so well as he who receives it? Another man knows little, or nothing about the matter. He may impose upon it a tax which is greater than its annual income; and if it be an annual tax, the owner would of course rather surrender his property, than consent to pay it.

Again: I must remind the gentlemen, that they have admitted the principle, that property must be protected, and protected in the very form now proposed; they are obliged to admit it. It would be a wild and impracticable scheme of Government, which did not admit it. Among all the various and numerous propositions, lying upon your table, is there one which goes the length of proposing *universal suffrage*? There is none. Yet this subject is in direct connexion with that. Why do you not admit a pauper to vote? He is a person: he counts one in your numerical majority. In rights strictly personal, he has as much interest in the Government as any other citizen. He is liable to commit the same offences, and to become exposed to the same punishments as the rich man. Why, then, shall he not vote? Because, thereby, he would receive an influence over property; and all who own it, feel it to be unsafe, to put the power of controlling it, into the hands of those who are not the owners. If you go on population alone, as the basis of representation, you will be obliged to go the length of giving the elective franchise to every human being over twenty-one years; yes, and under twenty-one years, on whom your penal laws take effect: an experiment, which has met with nothing but utter and disastrous failure, wherever it has been tried. No, Mr. Chairman: Let us be consistent. Let us openly acknowledge the truth; let us boldly take the bull by the horns, and incorporate this influence of property as a leading principle in our Constitution. We cannot be otherwise consistent with ourselves.

I was surprised to hear the assertion made by gentlemen, on the other side, that property can protect itself. What is the meaning of such a proposition? Is there any thing in property, to exert this self-protecting influence, but the political power which always attends it? Is there any thing in mere property alone, in itself considered, to exert any such influence? Can a bag of golden guineas, if placed upon that table, protect itself? Can it protect its owner? I do not know what magic power the gentlemen allude to. If it is to have no influence in the Government, what and where is its power to protect itself? Perhaps the power to buy off violence; to buy off the barbarian who comes to lay it waste, by a reward which will but invite a double swarm of barbarians to return next year. Is this one of the modes alluded to? This, I am well assured, never entered into the clear mind of the very intelligent gentleman from Frederick (Mr. Cooke.) How else, then, may property be expected to protect itself? It may be answered, by the influence which it gives to its owner. But in what channels is that influence exerted? It is the influence which prevents the poor debtor from going against the will of his creditor; which forbids the dependent poor man from exerting any thing like *independence*, either in conduct or opinion; an influence which appeals to avarice on both sides, and depends for its effect on rousing the worst and basest of passions, and destroying all freedom

of will, all independence of opinion. Is it desirable to establish such an influence as this? an influence which marches to power through the direct road to the worst, and most monstrous of aristocracies, the aristocracy of the purse? an influence which derives its effect from the corruption of all principle, the blinding of the judgment and the prostration of all moral feeling? and whose power is built on that form of aristocracy, most of all to be dreaded in a free Government? The gentleman appeals to fact, and says that property always *has* protected itself, under every form of Government. The fact is not admitted. Property never has protected itself long, except by the power which it possessed in the Government. There may, indeed, exist in some part of the world, a form of Government like that which the gentlemen wish to establish in the amended Constitution, where this influence is excluded; but if there does, it is utterly unknown to me.

Mr. Chairman, I will submit to the gentlemen; not tauntingly, but respectfully, and by way of illustration, this proposition. Will they agree to pay all the taxes and to take all the representation? Sir, they will not accept the offer; nor ought they to accept it: it is not seriously made. But still it may serve in some degree to show how necessary is the connexion between the duty of paying the tax, and the right of imposing it; at the same time that it will indicate the only point on which we feel alarm.

Every view, Mr. Chairman, which I am capable of taking of this subject, has led me to the conclusion that property is entitled to its influence in Government. But if this be not true as a *general proposition*, it is true as to us.

Gentlemen have fallen into a great error both in their reasoning and in their conclusion, by considering the subject before us, as if we were now for the first time, entering into a social compact. If we stood in the nakedness of nature, with no rights but such as are strictly personal, we should all come together upon precisely equal ground. But such is not the case. We cannot now enter into a new compact upon the basis of original equality; we bring more than our fair proportion, into the common stock. For fifty-four years we have been associated together, under the provisions of an actual Government. A great variety of rights and interests, and a great variety of feelings dear to the heart and connected with those rights and interests, have grown up among us. They have grown up and flourished under a Government which stood pledged to protect them; that Government itself, was but a system of pledges, interchangeably given among those who were parties to it, that all the rights and all the interests which it invited into existence, should be protected by the power of the whole. Under this system, our property has been acquired; and we felt safe in the acquisition, because under the provisions of that system, we possessed a power of self-protection. And by whom was that system ordained? Not indeed, by the same *men* who are now here assembled, but by the same *community*, which is now here represented. It was the *people of Virginia* who gave us these pledges; and it is the people of Virginia who now claim a right to withdraw them. Sir, can it be fair, or just, or honourable, to do this? The rights and interests which you are now seeking to prostrate, you yourselves invited into being. Under your own distributions of political power, you gave us an assurance that our property should be safe, for you put the protection of it into our own hands. With what justice or propriety then, can you now say to us, that the rights and interests which you have thus fostered until they have become the chief pillars of your strength, shall now be prostrated; melted into the general mass, and be re-distributed, according to your will and pleasure? Nay, Sir, you do not even leave us the option whether to come into your measures or not. With all these rights, and all these interests, and all these feelings, we are to be *forced*, whether willing or unwilling; we are to be *forced* by the unyielding power of a majority, into a compact which violates them all! Is there not, Sir, something of *violence* and *fraud* in this? Gentlemen are too courteous to suppose me capable of charging iniquity of this sort, upon them. They have too just an estimate, both of themselves and of me, to attribute to me so offensive a thought. If I really intended to express it, it might indeed expose me to just censure; but it would be worthless as an argument. I urge this view of the subject, because I feel entirely assured, that if gentlemen can discern either fraud or violence in their measures, they will themselves, be the first to abandon them.

I am sensible, Sir, that there is nothing in this view of the subject, unless the rights and interests to which I have alluded, are of a peculiar and distinctive character. What then are they? I purposely wave all subjects of minor importance, as too inconsiderable to give any rule. But a peculiar interest, and a great, and important, and leading interest, is presented in our slaves; an interest which predominates throughout the Eastern divisions of the State, whilst it is of secondary consequence West of the Blue Ridge. And what, let us now inquire, are its claims to consideration?

Will you not be surprised to hear, Sir, that the slave population of Virginia pays 30 per cent. of the whole revenue derived from taxation? Did there ever exist in any community, a separate and peculiar interest, of more commanding magnitude? But

this is not all. It affords almost the whole productive labour of one half of the Commonwealth. What difference does it make whether a certain amount of labour is brought into the common stock, by four hundred thousand slaves, or four hundred thousand freemen? The gain is the same to the aggregate wealth; which is but another name for the aggregate power, of the State. And here permit me to remark, that of all the subjects of taxation which ever yet existed, this has been the most oppressively dealt with. You not only tax our slaves as property, but you also tax *their labour*. Let me illustrate the idea by an example. The farmer who derives his income from the labour of slaves, pays a tax for those slaves, considered as property. With that income so derived, he purchases a carriage, or a horse, and these again are taxed. You first tax the slave who makes the money, and then you tax the article which the money procures. Is not this a great injustice; a gross inequality? No such tax is laid upon the white labourer of the West, and yet the product of his labour is of no more importance to the general welfare, than the same product from the labour of slaves. Here then, is a striking peculiarity in our property; a peculiarity which subjects it to double impositions, and which therefore, demands a double security.

There is yet Sir, another view of this subject which is not only of importance with reference to the immediate topic under consideration, but which furnishes a strong argument against the change which gentlemen contemplate. One eleventh* of the power which we possess in the national councils, is derived from slaves. We obtain that power by counting three-fifths of the whole number, in apportioning representation among the several States. Sir, we live in times of great political changes. Some new doctrine or other is broached almost every day; and it is impossible to foresee what changes in our political condition, a single year may bring about. Suppose a proposition should be made to alter the Constitution of the United States in the particular now under consideration; what could Virginia say, after embracing such a basis as gentlemen propose? Would she not be told by those who abhor this species of property, and who are restive under the power which it confers, "you have abandoned this principle in your own institutions, and with what face can you claim it, in your connexions with us?" What reply could she make to such an appeal as this? Sir, the moral power of Virginia has always been felt, and deeply felt, in all the important concerns of this nation; and that power has been derived from the unchanging consistency of her principles, and her invincible firmness in maintaining them. Is she now prepared to surrender it, in pursuit of a speculative principle of doubtful propriety, at best, and certainly not demanded by any thing in her present condition? If you adopt the combined basis proposed by the amendment, this danger is avoided. You may then reply to the taunting question above supposed, "we have *not* abandoned our principle; on the contrary, we have extended it. Instead of three-fifths, *all* our slaves are considered in our representation. It is true, we do not count them as *men*, but their influence is still preserved, as *taxable subjects*. The principle is the same, although the modes of applying it may be different. We are *not* inconsistent with ourselves." To my mind, there is much force in this argument, and I think that the gentlemen opposed to us, to whom the influence of our common State is as dear as it is to us, cannot but feel and acknowledge it. The topic is fruitful of imposing reflections; but I will not pursue it farther.

I have thus endeavored to prove, Mr. Chairman, that whether it be right as a general principle or not, that property should possess an influence in Government, it is certainly right as to us. It is right, because *our* property, so far as slaves are concerned, is *peculiar*; because it is of imposing magnitude; because it affords almost a full half of the productive labour of the State; because it is exposed to peculiar impositions, and therefore to peculiar hazards; and because it is the interest of the whole Commonwealth, that its power should not be taken away. I admit that we have no danger to apprehend, except from oppressive and unequal taxation; no other injustice can reasonably be feared. It is impossible that any free Government, can establish an open and palpable inequality of rights. Resistance would be the necessary consequence; and thus the evil would soon cure itself. But the power of taxation often works insidiously. The very victim who feels its oppression, may be ignorant of the source from which it springs.

Gentlemen tell us that our alarms are unfounded; that even if we should give them power to tax us at their will and pleasure, there is no danger that they will ever abuse it. They urge many arguments to prove this; and among the rest, they tell us that there is no *disposition* among them, to practice injustice towards their eastern brethren. Sir, I do firmly believe it. It gives me pleasure to say, that in all my associations with the people of the west, I have never had reason to doubt either their justice or their generosity. And if they can give us a sure guarantee that the same just and kind feelings which they now entertain, shall be transmitted as an inheritance to their posterity forever, we will ask no other security? But who can answer

* Judge Upshur corrects a mistake in his calculation. The proportion is about one sixth.

for the generations that are to come. It is not for this day only, but I trust for distant ages, that we are now laboring; we are very unwisely employed, if we are not making provision for far distant times. And can gentlemen feel any assurance, that under no change which time may work in our political condition, there shall be found any clashing of interests, or any conflict of passions? Will they, who are just *now* be *always* just, under whatever temptations of interest, or whatever excitements of the feelings? Shall there be no jealousies in time to come? No resentments? Nothing to *mislead the judgment*, even if it does not corrupt the feelings? Even if no *disposition* to oppress us should exist, how can we be assured that the people of the west shall view their own acts in all time to come, in the same light in which they may appear to us? That which *they* may consider mere justice, may appear to us as the worst oppression. Surely it is not surprising that we should claim a right to say, whether we are oppressed or not.

Again.—We are told that slave-holders cannot be in danger, because in point of fact, they comprise a majority of our white population. If so, it would seem to follow that no good objection could be urged to the basis proposed by us; it is the basis required by the interests of the majority, and therefore right by our opponents' own rule. But while the fact as stated, is literally true, the conclusion deduced from it, is not so. How is this majority made up? By counting the slave-holders in all parts of the State; by taking a few, scattered here and there, through the western counties, where slaves are scarcely considered at all, and if considered, are absorbed in other and greater interests, and adding them to the numbers on this side the mountain, where slaves constitute the leading and most important interest. I need not press this view of the subject. It must be manifest to all, that the slave-holder of the east cannot calculate on the co-operation of the slave-holder of the west, in any measure calculated to protect that species of property, against demands made upon it by other interests, which to the western slave-holder, are of more importance and immediate concern.

We are told also, that slave population is rapidly increasing to the west, and that in a few years it will constitute a predominant interest there. If so, Sir, the same few years will, upon the principles of our own basis, transfer to the west, the very power which they are now seeking through another channel. They cannot lose more by waiting for this power, than we shall lose in the same time, by surrendering it. But, Sir, although it is admitted that slave population is increasing to the west, yet its increase is by a *continually decreasing ratio*. In the period between 1800 and 1810, the ratio of increase was sixty-five and a half; between 1810 and 1820, it was forty-six; and between 1820 and 1829, it was twenty-eight. Whence is this? It arises from causes which cannot for ages be removed. There exists in a great portion of the west, a rooted antipathy to this species of population; the habits of the people are strongly opposed to it. With them, personal industry, and a reliance on personal exertion, is the order of society. They know how little slave labour is worth; while their feelings as freemen, forbid them to work by the side of a slave. And besides, Sir, their vicinity to non-slave-holding States, must forever render this sort of property precarious and insecure. It will not do to tell me that Ohio no longer gives freedom, nor even shelter, to the runaway; that Pennsylvania is tired of blacks, and is ready to aid in restoring them to their owners. The moral sentiment of these States is against slavery; and that influence will assuredly be felt, notwithstanding the geographical line or narrow river, which may separate them from us. And again, Sir, the course of industry in the west, does not require slave labour; slaves will always be found in the grain-growing and tobacco country alone. This is not now the character of the western country, nor can it be, until a general system of roads and canals, shall facilitate their access to market. And when that time shall arrive, the worst evils which we apprehend will have been experienced; for it is to *make* these very roads and canals, that our taxes are required.

I think Sir, it must be manifest by this time, unless indeed, my labour has been wholly thrown away, that property is entitled to protection, and that *our* property imperiously demands that *kind of protection* which flows from the possession of power. Gentlemen admit that our property is peculiar, and that it requires protection, but they deny to it the power to protect itself. And what equivalent do they offer to us? The best, I own, which it is in their power to devise; and it cannot be doubted that they offer it in perfect sincerity and good faith. It is due to them to say this, but it is also due to us to say that they can give us *no* security, independent of political power. They offer us Constitutional guarantees; but of what value will they be to us in practice? No paper guarantee was ever yet worth any thing, unless the whole, or at least a majority of the community, were interested in maintaining it. And this is a sufficient reply to an idea of the gentleman from Norfolk, (Mr. Taylor.) "Will you," said he, "trust your lives and liberties to the guarantees of the Constitution, and will you not also trust your property?" Sir, every man in the community is interested in the preservation of life and liberty. But what is the case before us? A

guarantee is offered us by that majority who claim to possess all power, and who have a direct and strong interest to violate their own pledges. In effect, it amounts to this. Gentlemen are indeed, ready to give us their bond, provided we will permit *them* to say whether they shall pay it or not. No guarantee can be worth a rush, if the very men who give it, have the power to take it away. Suppose your guarantee shall be violated, to whom are we to look for redress? Will the majority hold themselves responsible to the minority, for an abuse of their powers? To whom shall our complaints be addressed; on whom shall we call to relieve us from the unjust burthens which bear us down to the earth? On none, Sir, but the very men who have imposed them. We may appeal from Cæsar to Cæsar himself, and that is the only sanction which is given to this law for our security.

But let us examine the guarantees which are offered. The first is a Constitutional provision, that personal property shall never be taxed, except in a given ratio to land. The first objection to this is, that it is wholly unphilosophical; and must depend altogether upon accident for its fitness, so far as slaves are concerned. There is no fixed and uniform ratio between the value of slaves and of land. So far as labour is concerned, there may be indeed, something like a ratio: for the value of land itself, and of the labour which renders land productive, depend very much upon the same causes; and of course are subject to like fluctuations. But the value of slaves as an article of property; and it is in that view only, that they are legitimate subjects of taxation; depends much on the state of the market abroad. In this view, it is the value of land *abroad*, and not of land *here*, which furnishes the ratio. It is well known to us all, that nothing is more fluctuating than the value of slaves. A late law of Louisiana reduced their value 25 per cent. in two hours after its passage was known. If it should be our lot, as I trust it will be, to acquire the country of Texas, their price will rise again. Thus it appears, that their value depends on causes wholly extrinsic to us, and in no degree connected with the value of our soil.

But, even if this ratio were suitable, it may be useful to inquire in what manner we are to arrive at it, and what would be its operation upon society. You must either value the *whole* personal property of the country, or only *such parts* of it as you propose to tax. Let us view the subject in each of these aspects. I venture to affirm, that there cannot be a measure more directly hostile to the genius of free Governments, than that which proposes to value the whole property of every citizen who lives under it. Who is there that would submit to the exercise of such an inquisitorial power? Nay, can any measure be more *unwise* among a people essentially commercial in their character. Credit is necessary to the very existence of trade. It will not do to proclaim to the world, the uttermost farthing which a trading man is worth. It is not his interest that it should be known: this might, and in most cases, *would* frustrate the best planned speculations. But is it *practicable* to make this valuation? Will you permit the assessor to go into your chambers; to search among your wife's apparel for concealed treasure; to demand your purse, that he may count the dollars it contains? And, if you will not give him authority equal to all this, and more, what assurance can you have that his valuation is correct? You will compel the tax-payer to swear. And suppose he will *not* swear? Are you to excuse him from paying his tax because he will not tell you how much it ought to be; or will you punish him for not telling? Subject him to *peine forte et dure*, for resisting the impertinent exercise of an inquisitorial power? But suppose he *will* swear, and what then? The humble farmer who owes no man a shilling, and who is silently laying up his little gains from year to year, careless of the reputation of wealth, has a direct interest to put the smallest possible value, upon his taxable property. The less the assessor thinks him worth, the less will he have to pay. The merchant who lives by credit, and whose profits depend on the opinion which others may entertain of his wealth, has a direct interest to make the amount as large as possible. Here then is an invitation to perjury on both sides; a fiscal law whose direct tendency is, to corrupt the purity of the main channel of public justice! Nay, this is not all. Even if the citizen be *disposed* to swear to the truth, it is not always possible for him to do so. Suppose that A holds the bond of B for a thousand dollars, and that B holds the property for which the bond was given; to which of the two shall that sum be assessed? Not to B, because it is a debt which he owes; not to A, because the debt may never be paid. B may indeed, be taxed for the property which the bond has purchased, but A cannot be taxed for its equivalent, unless he will swear not only that the debt is due, but that the debtor is able to pay it. Who is there that would venture to do this? Not one.

Let us now take the other alternative. Instead of valuing *all* the property of the Commonwealth, let us suppose the valuation to be made of such articles only, as you propose to tax. Unless property is to have a fixed, permanent, and unalterable value: a value which is to experience no change among all the changes which are going on around us: you will be driven to the necessity of making your valuations so frequent, that the expenses of collection would add seriously to the burthen of taxation. And you could not do otherwise, than make them frequent, for property is continually

changing hands; and he who, to-day, is liable to a heavy tax, may not, to-morrow, possess a single taxable subject. This Sir, must necessarily prove a fruitful source of discontent and murmuring. There is no man, whose justice is so unimpeachable, or whose skill is so great, as to satisfy every one, in the discharge of this delicate duty. Even in this view, the plan must be pronounced altogether unwise. But at what time is the valuation to be made? You must make it either at the moment of passing your tax law, or before, or after it. If at the same time, the Legislature themselves must be the assessors? Here then you have all the play in your own hands. It is the same to me, whether you value my property at two hundred dollars, and tax me five per cent. or value it at one hundred dollars, and tax me ten per cent. I pay the same sum in both cases. Of what value then, is your guarantee, if the same power which *taxes* my property, shall possess the right to *value* it? But, suppose your valuation to be made by a different power, and *before* the tax law is passed? What articles shall be valued? There is no law to guide the assessor; no law which declares what articles you mean to tax, and what you do not mean to tax. The consequence is, that every thing must be valued: the same impertinent scrutiny which I have already supposed, must be made in this case also; a scrutiny which would not fail to raise up more than one Wat Tyler in every county of the Commonwealth. But there is yet another horn of the dilemma. Suppose your valuation made, *after* the tax law is passed. It is the peculiar office of that law to fix upon the taxed subject, an ad valorem value: and this I presume, must always be regulated by the wants of the country. But how can you tell what rate per centum on property, is necessary to raise a given sum, unless the value of that property is previously ascertained? Either way, therefore, this scheme must be abandoned as wholly impracticable.

The next guarantee which gentlemen offer us, is a check on the power of appropriation. Much of the reasoning which has already been urged, would tend to prove that *this* also, would afford us no protection whatever. For myself, however, I desire no such guarantee; I should regret to see such a restraint imposed upon the power of the Legislature. My principle is this: As the payer of the tax, I have a right to be the judge of my ability to pay, and of the value of that protection *for which* I pay. But when my money has gone *rightfully* into the public fund, God forbid that it should not be applied wherever it may be most needed. It would rejoice me personally, to see every cent of it contributing to useful improvements beyond the mountain. I do not want any part of it back again; let it go wherever it will do the most good.

These, Sir, are the only Constitutional provisions which are offered us, in lieu of that power which we claim, as belonging of right to our greater stake in the Government, and as rendered necessary by the hazards to which our property is exposed. The conclusion to which I have arrived, (and I congratulate the Committee that I am fast drawing to a close,) is this: It is necessary to the well being, and even to the very existence of society, that property should be protected; it cannot in any case, and least of all, in *our own case*, hope for protection, except in the power of protecting itself; and no adequate substitute for that power, has been, or can be offered, in any other form of Constitutional provision. And now, permit me to ask, with whom can this power be most *safely* deposited? I grant, Sir, that gentlemen opposed to us, are equally patriotic in their feelings; equally just in their purposes, and equally sincere in their declarations, with ourselves. Still, I ask, even upon the very principle of this equality, where can the political power of this Commonwealth, be most *safely* deposited? So far as rights of person are concerned, we are all precisely equal, and the slave-holder can have no imaginable motive to do injustice in that respect. In the exercise of the tax-laying power, from which alone, injustice is to be apprehended, he has not the power to make any injurious discrimination. Among all the articles which have ever yet been made the subjects of taxation within this Commonwealth, which of them is not found on this side of the mountain, in just and fair proportion, at least? How, then, can we tax the west, without also taxing ourselves, in the same mode, and in just proportion? But reverse the case. There is not in the west, in any considerable degree, *one* species of property which constitutes the full half of our wealth, and which has always presented a ready subject for taxation. Give the power to the west, and will there be no temptation to abuse it? no temptation to shake off the public burthens from themselves, and throw an unjust proportion of them upon the slave-holder? Sir, there is much in this view of the subject. I am not indulging in mere speculation and conjecture. The experiment has been actually tried. For fifty-four years, the taxing power has been with us, and who can say that it has ever been abused? The gentleman from Frederick (Mr. Cooke) himself, has admitted that we have never abused it. I heard the admission with great pleasure; it was honourable to his candour, and valuable to us, for the source from which it sprung. Why, then, change this deposit of power, which has been thus justly and safely exercised for more than half a century? Shall we, for the sake of mere theoretical principles, or speculative doctrines, throw our interests and our safety, upon new and hazardous experiments? Let us not forget, Sir, that after all, Government is a practical thing,

and *that* Government is best which is best in its practical results. There is no end of speculative systems. The world has been full of them, from Plato, down through Harrington and Moore, and a host who succeeded them, even to the prolific bureaux of the French revolutionists. Of all their schemes, not one has ever been reduced to practice, in any part of the world. Experience is the best guide in Government. That guide we have; let us not shut our eyes to the lights which it affords us. For more than half a century, the political power of this Commonwealth, has been in the hands which now hold it. During all that time, it has not been abused. Is it then without cause, that I ask for a good reason why it should now be taken away?

Mr. DODDRIDGE now rose and addressed the Committee in answer to Judges Green and Upshur, as follows :

Mr. Chairman,—Although I had not the least expectation of embarking in this discussion, at the present time, yet seeing no one disposed to reply to the argument just concluded, (Judge Upshur's) I feel myself irresistibly invoked to submit a few remarks, in answer both to the gentleman from Northampton (Judge Upshur) and to the gentleman from Culpeper (Judge Green.) From want of proper time for arrangement, my remarks will be more desultory than I could wish, and I fear too diffuse for my own purpose, which is brevity in this debate. Having been the mover of the resolution under consideration in the Legislative Committee, I should not feel myself justified in permitting a vote to be taken until further discussion, which it is both my wish and my hope to elicit. In pursuing this subject, I feel myself both relieved and delighted, by the frank and friendly course of the gentlemen from Northampton and Culpeper, and particularly by that sincerity which the former displayed towards those opposed to him. Both gentlemen have furnished an example to us which I hope to imitate, while they have lessened our labours by such a candid statement of the principles relied on to support the amendment under consideration, as leaves us no room for doubt.

The gentleman from Northampton, yesterday, carried us back to the original state of man, in order, thence, to deduce the elements of the social state. His remarks were of such a general character, as not to require from me a close or critical examination. So far as the natural or supposed savage state of man has been referred to, the effort is entitled to the reproof of the late Judge Ashurst, in which the gentleman from Northampton more forcibly seems to concur. By both, this course is condemned as a vain effort to end our researches into the present rights and condition of society, in that rude chaos from which society is supposed to have originally sprung. I agree with the gentleman from Northampton, that if man ever existed in a savage state, in which he was under no control of Government, we must go back to a period anterior to Bible history, to find him. Although the barbarous tribes on our borders obey no written code, they have their unwritten laws, to which they yield obedience; which they not only permit to exist, but assist to execute. In our wilderness, we find not that supposed state of savage life, to which in disquisitions of this kind, reference is so often made. If this forced state of man ever existed, I will agree with the gentleman from Northampton, that, what he calls a "feeling of property," may have been one of the strongest inducements for leaving it, and for seeking in social life, and under a social compact, security for that property. This security consisted in the force of society, and it was for this, that man subjected himself to the restraints of the social compact; and as, in the nature of things, this force abides with the majority, man and his property became subject to their will. Of this position, I will say more hereafter, when I shall notice the gentleman's views of the rights of majorities, and contrast them with, what he supposes to be, those of minorities.

The gentleman from Northampton has said, that our Constitution is a compact made by all, for the benefit of all; that if there was in the majority a right to govern and control society, it must be derived, either from the law of nature, or from a Conventional source; and if from the latter, we must look for it in our written Constitution.

Here the gentleman first touched Virginia ground, and alluded to Virginia history; and here it is my purpose to meet him, and to follow him with frankness through each postulate maintained in his most able and eloquent argument.

Although not for the purpose of questioning its legal obligation, I deny the very first assumption of fact stated by the gentleman. The Constitution of Virginia is not a pact "made by all, for the benefit of all." It is well known, that the present Constitution was got up in a time of difficulty and danger. It was adopted as an expedient for existing circumstances, to serve the purposes of the time, and not looked upon as an instrument which would meet the wants and bear the test of experience for future ages. So far from all the members of society having had an agency in making this Constitution, none were, even, consulted except freeholders, and those only of a certain class, holding fifty acres of cultivated, or one hundred of uncultivated land; the property qualification then, being double what it is now. The Con-

vention which made the election law under which that of 1776 was elected, was no other than the last House of Burgesses elected under the Colonial Constitution. When they were dissolved by an act of regal authority, they were reduced to the condition of so many private gentlemen freeholders. They possessed at least the confidence of the freeholding class of the community, of which their recent elections to the House of Burgesses was evidence. To the condition of private gentlemen they were constitutionally reduced; for the very act by which they were dissolved, was that by which the whole regal Government, of which they were but a part, was ended. Before their dissolution, they constituted only one of three legislative branches, yet when they met in March, and styled themselves a Convention, they assumed the exercise of all the powers of Government. In their March session, they passed many laws and resolutions, by the last of which, they declared that their powers were at an end. The country submitted to their authority, which it was wise to do, in the existing state of things. Seeing this, the members met again, and held another session, in the months of May and June, 1775; in the latter of which months, they passed an election law, which is the basis of that which now exists; and under this law, the Convention of 1776, who made our present Constitution, were elected.

When this election law was made, by whom was it made? to whom addressed? and by whom accepted and executed? The answers to these questions are plain, and are so many historical truths. The Convention of 1775, have certainly earned to themselves the thanks and gratitude of posterity; but this consideration by no means alters the facts. They were a body of freeholders, of a certain class, who, unauthorised by the whole, or any part of the people, assumed authority. They authorised that class of freeholders to which they belonged, to elect others of the same class, as their successors, and these latter made the present Constitution. The Constitution thus made is, therefore, not a compact, made by "all, for the benefit of all," as has been said, but by a part of society, for the benefit of that part, in a very great degree. Had there been but one class of men in Virginia at the time, holders of the necessary quantity of country or town property, the Constitution might have been considered as the agreement of all, for the common benefit; and for aught I know, might have been adapted to the wants and exigencies of future times. This, however, was not the case. The Convention of 1776, did little more than to continue the existing state of things. In the place of the old House of Burgesses, they erected the House of Delegates, while the Legislative Council gave place to the Senate; each new branch possessing precisely the powers, and privileges of its predecessor; and the members possessing the same qualifications respectively, and elected by the same electors. The Executive head was, alone, substantially changed.

Mr. Chairman: I have made the foregoing remarks, as I have already mentioned, not to disprove the legal authority of the present Government, but for another, and very different purpose. When we shall come at the discussion of the resolution concerning the right of suffrage, the foregoing remarks will serve to show who they were, who, not having been consulted in the formation of the present Constitution, will have a right to be consulted on the adoption of that which it is now proposed to make.

The greatest grievance proposed to be remedied, is the inequality in the representation, and this especially in the House of Delegates; the next, in point of magnitude and general concern, is the freehold restriction on the electoral franchise. The latter of these will claim more particular attention, when the third resolution of the Legislative Committee shall come under consideration. As to the first, the distribution of representation, as conferred by the Royal charter of Government, may have been tolerably fair and equal at the date of that charter. There were then but few counties or settlements, perhaps not more than six or seven, in the Colony. They were all contiguous; they had but one interest, and but one pursuit, which was agricultural. Each county had its frontier. When war existed on the border, it affected all; when peace reigned, all enjoyed it alike. In process of time, this state of things became materially changed. When the settlements extended far from the Capital, owing to the unprotected state of the country, and the sparseness of population, frontier counties were exposed to almost continual wars, while the interior enjoyed the blessings of profound peace. With few, and but short intervals, this state of things continued until Wayne's victory. Whatever may have been the justness, or equality of representation, at the beginning of the Royal Government, great changes were made before the Revolution. Around Williamsburg, the seat of Government, counties and settlements were sub-divided into small precincts, to each of which a representation of two members in the House of Burgesses was allowed, while no more was allowed to the large counties farther removed from the influence of Executive favor, and to those on the frontier. No more, indeed, was allowed to all West Augusta. Hence, if we look at the map, we will perceive representation distributed in double, treble, or even quadruple proportions round Williamsburg; and this representation grew up to be so unequal, and the consequent evils so intolerable, as no longer to be borne with.

In consequence, public opinion, in 1816, was brought to bear on the Senate, and in the session which commenced in that year, representation in that body, was distributed and apportioned on the basis of white population. I mention this fact now, in order to meet and refute a positive assertion, here and elsewhere, that the proposition to equalize representation on the basis of white population, is a new, cruel, and unheard-of innovation!

Since the year 1790, scarcely one session passed, in which petitions were not received in the General Assembly, praying for a reform of abuses in this particular, and in the law of suffrage. From the counties of Patrick and Henry, these petitions were as regularly looked for as the commencement of the session. In 1815, a bill was brought into the House of Delegates, for making a new arrangement of the counties in districts, for the choice of Senators, on this very abused white basis. At that time two-fifths of the free white population, were represented by *four* Senators, while the other three-fifths had *twenty*. This inequality was sensibly felt by those of our citizens who lived west of the Blue Ridge; and it is impossible for any gentleman to resist the conviction, that from that inequality, there must have resulted much misrule and practical evil. Every exertion was made, by western members, to pass that bill. Every effort, however, failed. The bill was nailed to the table after the second reading, and although motions were repeatedly made to take it up for consideration, they were scornfully rejected, by a silent vote.

At this time, 1815, there was not, in the House, one eastern constitutional lawyer, who did not maintain that no Legislative act could change the districts. They argued, that the same power that made the Constitution, had ordained the districts, and that they were as sacred as the Constitution itself, and could only be altered by a general Convention of the people.

One of the natural consequences of this doctrine was, that large assemblage of distinguished men, commonly called the Staunton Convention of 1816. That body addressed to the General Assembly, of 1816, an able memorial, praying for the passage of a law, to take the sense of the people on calling a Convention. Numerous petitions were, at the same time, received from various quarters of the State, on the same subject, and uniting in the same prayer. All who felt deeply aggrieved by the unjust rule of apportionment, looked forward to such a law, and to a Convention, as the only means of redress. All demanded that basis which we now demand. The bill which grew out of those memorials, and petitions, provided for taking the sense of the people, on the expediency of calling a Convention, with power to consider the propriety of adopting certain amendments. The friends of reform, did not then suppose the people prepared for one with full powers like the present. The amendments proposed, were, first, to *equalize representation among the free white people according to numbers*; second, to equalize the land-tax. To these was added a third, on the motion of a member from Fairfax, amended by his colleague, to extend the right of suffrage to all free white male citizens, twenty-one years of age, "who have evidence of permanent common interest with, and attachment to, the community."—The words of the Bill of Rights.

The bill passed in that limited form. It provided for taking the sense of the people on so amending the Constitution, as to extend the right of suffrage; to equalize representation on the basis of white population, and to equalize the land-tax. After ineffectual struggles to strike out the first and second clauses, it passed the House of Delegates, and was sent to the Senate. The majority in the House, on this vote, represented more than three-fifths of the whole white inhabitants. A gentleman, then from Norfolk borough, and now a member of this Convention, opposed that bill with all his zeal. In its progress, he moved an amendment to it, to introduce a representation of slaves. Whether he intended a representation of all, or three-fifths only, I cannot undertake to say, as no proposition was made to fill the blank in this amendment. This proposition was maintained, by the gentleman from Norfolk, with the most eloquent and cogent exertions of his matchless powers, I have ever yet heard. He was opposed by some of those who are opposed to him now; and notwithstanding his exertions, to the best of my recollection, there were but twenty-six votes on his side, in the whole House of Delegates. Of the precise number, I cannot be certain. The proposed amendment appears on the Journal, with the vote, but not the number on either side. Had that bill passed the Senate, the Convention, then to be called, would have represented the free white population according to numbers; and it is so far from being new and unheard of, that the demand for it in that session, and its establishment in the Senatorial bill of the same session, form parts of our record history.

When this bill was sent to the Senate, it was for a time laid on the table, and not acted on. The reason was as follows: The belief was suggested, and had gained ground, that some eastern Constitutional lawyers had changed their opinions touching the power to legislate over the districts, and hopes were entertained, that in order to tranquilize the public mind for a while, like throwing a tub to the whale, they would bring in a bill to equalize the Senatorial Districts, and to apportion representation

tation in the Senate on the basis of free white population, which would relieve the Senate from the responsibility of accepting or rejecting the Convention bill. These hopes were not disappointed; for the opposers of a Convention brought in a bill to equalize the districts, and to apportion representation accordingly, and passed it. This bill is at present the law, and it establishes the Senate as the representative of the free white population, in equal numbers. Thus, in one and the same session, there were those politicians, who opposed and supported that very basis, which they now denounce as so new, unheard of, cruel and oppressive. That pure element was thus sustained, and is supported by the precedent then made, of so changing the districts from time to time, as to give to it its proper vigour. Nevertheless, there was, even then, some cause to complain. The only tabular statement of population in our power, was the Census of 1810, and from this the state of population had changed, so as to produce about the same injustice which the last General Assembly would have inflicted, if they had based our present representation here, on the Census of 1820, instead of the more gross injustice of establishing it on that of 1810. From these facts, Mr. Chairman, we perceive that our basis has been solemnly settled, and this not rashly, but after meeting opposition from the first talents in the land.

The change in the Senate was publicly known. It could not be concealed, as it not only appeared in the Statute Book, but affected the elections of the three following years, in giving to the new principle its full operation. This was not fully accomplished, until the election of 1820; and the Census of that year, shewed the people the extent of the inequality yet remaining, and which, according to the precedent of 1816, may be corrected after the next enumeration, by a new arrangement of districts. I admit that after power had thus, partially, changed hands in the Senate, the public mind rested from its excitement, and took a breathing spell, until the autumn of 1824, and spring and summer of 1825. During this period, the representation in the House of Delegates, and a proposition to equalize it on the white basis, became the subjects of newspaper controversy. Writers on one side endeavored, by exposing the misrule of the minority, and the evil tendency of that rule, to awaken public attention to the subject, and to bring about reform. On the other hand, attempts were made to alarm the people. They were taught to believe that those who proposed to reform, meant to destroy; that the judicial tenure of office, the right of suffrage, and even property of a certain description, nay, all that was valuable in society, would be hazarded by the call of a Convention. It was then maintained, as it is now maintained, that the majority suffered no practical evil from the government of the minority. Out of these discussions, arose the second meeting at Staunton, called the Staunton Convention of July 1825. That Convention was a body which would have suffered but little disparagement by a comparison with this. It contained upwards of one hundred delegates of the friends of reform. They came from the borders of the State; from the east to the west; from the sea to the Ohio. Their object was to increase the numbers, and strengthen the confidence of their friends; and to weaken and reduce the number of their opponents, by publishing to the whole Commonwealth the grievances of which they complained, and the redress they sought. In a word, they intended to act on public opinion, and in this they succeeded. Their coincidence in opinions and views was remarkable. It was matter of astonishment to themselves. They acted openly; they sat publicly, and kept and published a journal containing their proceedings and resolves. By their resolves, they claimed reformation of representation on the white basis; the reduction of numbers in the House of Delegates; the abolition of the Executive Council; a more responsible Executive, and an extension of the right of suffrage to all those, whether *freeholders or not*, who have evidence of common interest and permanent attachment. This journal was published in all the Gazettes. It was communicated to the General Assembly, and together with the memorial of that meeting, and the petitions of the people, became the subject of the most grave and animated discussions in the three following sessions, and until in that of 1827, their prayer was granted by the passage of the law for taking the public sense on calling a General Convention. All those principles were again discussed last winter, during the progress, and on the passage of the law under which we are now assembled. I will briefly notice the proceedings of last winter on this subject. The bill for organizing a Convention, was prepared and reported early in the session. It proposed representation by the Congressional Districts. This scheme was resorted to, to give representation in this body for three-fifths of the slaves, or what is called the Federal number. It was maintained on that ground most perseveringly, until towards the close of the session. The principle was then called the *black basis*, and it became so odious within these walls, and throughout the country, that its friends were compelled to abandon it. It was perceived, however, that if their arguments proved any thing to sustain a representation of *three-fifths*, they equally sustained a representation of *all* the slaves. From the moment that it was determined to abandon the black basis, the bill was sustained as one founded on the very combined ratio proposed by the gentleman from Culpeper, now

under consideration. Some of those who had, by argument, maintained the black basis, denied that any thing but a basis of population and taxation, was ever contemplated, and they wound up their efforts by endeavoring to shew that the arrangement of Congressional Districts, reasonably effected their new pretensions, and had been resorted to for that purpose. After all this, it would be paying but a poor compliment to the intelligence of our constituents, to suppose them ignorant that the white basis would be here claimed, and that the battle between that and a compound one of some sort, would be the one most severely contested. In this brief review of the proceedings of last winter, I speak with confidence, and to the memories of many gentlemen now present, who must sustain me when I say, that the friends of the minority in this Convention, have commenced here, precisely where they ended last winter. It was then said, that if one slave ought to be represented, all ought, and in the form of taxation, the same thing is now claimed by the combined ratio of the gentleman from Culpeper. It is the same principle, in disguise. After the candid admissions of the gentlemen from Northampton and Culpeper, proof of this has become unnecessary. Whether you count him as a whole man, or as a fraction, it is still the same question, covered, indeed, by a few flowers and frounces, but it cannot be concealed, that a slave representation lies at the bottom of the combined ratio. Both gentlemen admit that, but for the purposes of security for that species of property, the principle would not be insisted on.

Mr. Chairman, I will now proceed to notice more particularly, and in their order of time, several postulates urged by the gentleman from Northampton.

Although that gentleman had agreed, that in order to settle our rights in the social, nothing could be deduced from the natural state of man, whether considered as a reality or as a fiction, I understood him to take up and espouse the position of the gentleman from Culpeper, "that the rights spoken of in the Declaration, are such as *were* natural, and do not pertain to the social state." To this position, the words in the first section of that Declaration are a conclusive answer, i. e. "All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into society, they cannot, by any compact, deprive or divest their *posterity*; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Now it is manifest, that what is here spoken of, are those *a priori* rights, which are supposed to exist in a state of nature, and are retained to man in society, so as to be social rights, secured by the social compact.

The gentleman from Northampton, however, qualified the position of his friend, by supposing him to have said that, "no man in a social state, has a natural right to control another." This may be true, and yet, in order to *pursue happiness and safety*, or even to *acquire and possess property*, a majority may well be supposed to possess the right, both natural and social, to prevent the minority from ruling them; from controlling their actions, and from endangering their lives, liberty, properties or safety. I will say nothing as to the suppositious case of one savage tribe of hunters on this continent, dictating law to another of fishermen, on the isles of another. Nor will I follow the gentleman either to the first family of the human race, or into the enquiry, so often made and so often answered, why females, infants and lunatics are not counted as parts of society in settling the question of what majority should rule. The common sense and experience of mankind has determined that there is a state of infancy and a state of maturity, and the necessity, in all climes, of fixing on a certain period of human life at which, for legal purposes, the one shall terminate and the other commence. As to lunatics, the same common sense has excluded them for want of mind. All the excluded cases are founded on, either the imbecility of mind, or its subjection to the will of another, whereby it loses its freedom. The exclusion of the other sex, has been most eloquently accounted for by the gentleman himself. Of woman he says, that "the fiat of God which brought her into existence, subjected her to the will of her husband."

I dismiss all these speculations, as more calculated to amuse than instruct us, and proceed to the postulates of the gentleman from Northampton, which belong to the subject in dispute, and serve to explain it. The first ground insisted on is, that there are two majorities to be considered: one of persons, and the other of interests, both of which he contends ought to be counted, in order to arrive at and ascertain the majority which is entitled to rule. The gentleman has pushed his principles farther, and has contended that when men enter into society and form the social state, each brings with him his person and his property. Whether, indeed, on entering into society, man and his property become parts of that society, is a question which I will consider, briefly, as that is one of those in dispute. One Indian, we are told, enters society with two bows and arrows; another with one, and a third with none, while another brings nothing but his age, his infirmities and his wants. From these facts, it is attempted to draw the conclusion, that he who brings the most property to protect, is entitled to the most influence in Government, instead of the obvious one, that he

should be subjected to the greatest share of the expenses of its protection. It has certainly been left to the men of Virginia of the present day, to make this discovery in the science of Government; for I may safely challenge them to produce any authority for it, ancient or modern. To get along with this argument, it was found necessary to denounce the principles laid down in the Declaration of Rights, which have already been sanctioned by an unanimous vote of this Convention. Their argument is, not that men alone constitute society, but that property enters into and forms a component element of it. The interests growing out of property, they say, must be represented. He who owns a tobacco field, must have representation for that interest, as well as his person. Not only do the gentlemen contend that the protection of property is one of the great ends of Government, but that, inasmuch as rights to property require more legislation to define and protect them than personal rights do, it is the principal and greatest end of Government. Property, then, it seems, is more entitled to consideration than persons. Simple laws, it is said, are sufficient for all personal rights, while those required for property are complex and voluminous. It seems that a large code of laws are requisite to define and protect our rights to a knife and fork, and to understand them the consumption of a thousand lamps; while those that concern our persons, may be studied in a week. By this course of reasoning, gentlemen have arrived at their conclusions as to the greatness of the interests of property, and the comparative littleness of all that concerns our persons. We are reminded, that he who enters into partnership with the greatest capital, is entitled to the greatest share of influence, and that the same principle must be carried into Governments. This, however, is not true, according to the laws of partnery. There, he who has the greatest capital, shares the greatest profit, and bears the greatest loss, which is precisely our doctrine. The greatest influence is not conferred on the largest capitalist by the laws of partnery. Wherever it does exist, it is by express stipulation in the articles of co-partnership. Will gentlemen push their principle to its legitimate results? Will they give to the largest capitalists, the largest suffrage in the State? I imagine they are not prepared for this. I will suppose the case of a man in any small county, who can bring two hundred able bodied slaves to the plough; will they confer on him votes according to the amount of his property? or, will not a man in the same county, with an house and lot in some decaying village, and who lives by catching the jumping mullet, be entitled to the same suffrage? This must be admitted, and yet the gentleman declares that he never will sustain a principle which will not bear to be pushed to its practical results. The argument must be carried to this extravagant length, or it must be abandoned altogether. The whole of this argument, is manifestly sustained, only by reference to some supposed original social pact made by men just emerging from a savage state; for surely gentlemen cannot say that the state of society here in 1775, furnished any thing to support these deductions, or that the social compact then formed, contained any such stipulations in favour of wealth.

I will here bestow some reflections upon the supposed analogy of the question of a combined ratio now, to the Colonial dispute with Great Britain. From this an attempt is made to prove the position that taxation should not only go hand and hand with representation, but that they should be measured by each other; that the amount of the former should determine the quantity of the latter. This was not the Colonial question. The Colonies claimed redress, not because taxation was not in proportion to representation, but because they were not represented at all. This was the point of all the appeals made by Statesmen of that day, whether addressed to King or People. The principle maintained was totally different. I refer here to a State paper written by Doctor Franklin in London. The Colonies were compared with the kingdoms of Ireland and Scotland before the union. Each of these was a separate kingdom or realm, to every intent and purpose, subject, only, to the same sovereign. Each had its Parliament, which could alone tax the subject or grant supplies; and it was maintained that the Colonies stood in the same situation. Each had its own Legislative Assembly, and each was subject, like Ireland and Scotland, to the same Crown; and the argument was, that as the Parliament of England had no right to grant supplies to be paid by the people of Ireland or Scotland, so neither could they vote supplies to be paid by the Colonies. The King, it was contended, could only draw a revenue from Ireland, or Scotland, before the union, in his political character of King of Ireland, or King of Scotland, granted by their respective Parliaments, and it was urged that each of these Colonies bore the same relation to the Crown and Parliament of Great Britain, that Ireland then bore. It had never been pretended that the discontents in the Colonies arose out of the question, whether taxation and representation were correlative? They rested on the grounds I have just mentioned; for the correctness of which I might appeal to the personal recollections of several members of the present Convention, and to the historical reading of all. Representation is not the correlative of taxation. The question is by whom, or by what Government, were we to be taxed?

Whatever may have been the views with which the gentleman from Northampton endeavoured to enforce the position that man coming out of a state of nature into society, brought with him his property as an element of that society, I cannot pretend to say. Certain it is, however, that he yielded the whole of this argument, when he declared that when man enters into civilized life under a social compact, "nature and all her principles are swept away." Perhaps, in Virginia this doctrine might have been seriously and successfully urged, had it not been for the conservative words in the first article of the Bill of Rights, which I have before quoted. With the above declaration, the gentleman returned to the true point in dispute. He admitted that in arriving at the majority of society entitled to rule, if any be entitled, negroes, bond and free, were to be excluded, but that the *jus majoris*, could only apply to a majority of white persons and interests combined, calculating slaves as property.

The gentleman contends, that among the rights of individuals at the moment of forming a compact of Government, is the right to say whether a majority shall govern the minority or not? And he enquires what is to be done where one alone refuses his assent? The answer is an easy one: he must submit or leave the society, and thus preserve all his rights. It is again urged that the *jus majoris*, to rule the minority, does not exist in Virginia. Here the point of dispute at which we have arrived seems to be overlooked. We are now a majority, claiming to have our political powers according to our numbers. These powers are denied to us, and we have been met with a subtle distinction between civil and political rights. It is admitted that in relation to the former, each citizen, is equal to each other citizen; but it is contended, that the safety of the whole will not permit this equality in respect of the latter. If this equality of political power, and consequently the rights of a majority of numbers to govern does really exist, it is said that it must be found written in the Constitution. This shows how ingeniously gentlemen can vary their views of that document in which our rights are declared.—The *Declaration of Rights*. At one moment that document, and the makers of it, are extolled to the skies: at another, the principles it contains are termed metaphysical abstractions; as visionary theories, which appear very well on paper, but are wholly unfit for practical application. One of our opponents has seriously maintained that the Bill of Rights is, in fact, no part of the Constitution, although the contrary has been determined by the Court of Appeals. And it is absolutely necessary for gentlemen to get over the Bill of Rights, and to reverse their votes in its favour the other day, in order to get along with their argument at all; because the third article of that instrument is in their way. That article declares "that Government is, or ought to be instituted for the common (not unequal) benefit, protection and security of the people; and that whenever any Government shall be found inadequate to the purposes for which it was created, a majority of the *community* hath an indubitable, unalienable, and indefeasible right to reform, alter or abolish it," &c. Thus the very right in question; the *jus majoris*, is contained in the Declaration of Rights in express terms; and further, that whenever a Government shall degenerate into misrule and become unfit for the accomplishment of the great purposes for which it was instituted, the *majority of the community* have a right to amend it, or to pull it down and build up another. Here the right in question is given to the majority in express terms, and this is the *postulate* advanced and demanded. This right is always abiding with the majority, from whatever source derived, and with them, and with them alone, abides the sanction for its protection. This right is asserted by those whom we have been taught to look on as the greatest of men and the first of patriots. But the assertion of this right is only found in that part of the Constitution, called the Declaration of Rights, which as yet, although once re-enacted by ourselves, lies on our table and is open for discussion. Perhaps this state of the argument furnishes a clue to the desire we have manifested to write the book first, and last, the preface. However, in an evil hour for their argument, they had agreed to the preface first.

We have already decided by an unanimous vote, that the Declaration needed no amendment. It is true that vote has been rescinded, but this was only done to make room for the present debate. We have treated that document as one of the subjects committed to us by our constituents. As a part of the Constitution itself. We have treated it with the first respect among the Departments of Government by giving it the first reference, and by giving to the first report made on it the most prompt attention in the House. Our Committee has revised the Bill of Rights, and on their report we have concurred with them, that it needs no amendment. And shall we now be told that it abounds only in abstractions unfit for use? This report is, it is true, on the table, but is, professedly, to be disposed of, and every one knows what the disposition will be.

In our course we have not exactly followed in the footsteps of our predecessors who made the present Constitution. They acted as master builders: we have not. They laid the foundation first, and then proceeded to the superstructure. After they had declared the Government of the King of England at an end, the first thing they did was to appoint a Committee to prepare and report a *Declaration of Rights*. For

what purpose? To serve as a basis of Government. They first determined the powers they would surrender, and the powers they would retain, and they acted upon and passed the Declaration of Rights first, and then, and not until then, they proceeded to erect upon their declared principles, the Constitution. If it must be so called, they made the preface first, and then the book.

In the course of his very eloquent argument, the gentleman from Northampton admitted, that it was the safest rule that a majority of the units of the community should govern, but only when property was equal. Unless property was equal he did not admit the principle at all.

[Mr. Upshur rose to explain. He said the gentleman from Brooke had mistaken his meaning. He had not said that the rule was only safe when the property of one individual was equal to that of another. He disclaimed, alike, the principle, and the effect that might be deduced from it. He applied the remark to large masses of population having not only unequal but discordant interests.]

Mr. Doddridge proceeded. I must have misunderstood the gentleman yesterday, but I did not misunderstand him to-day, and this, had he listened a little longer, he would have discovered. The gentleman from Northampton has laboured, and I am sure he thinks successfully, to maintain that, in Virginia the majority of free white persons have not the right (and he almost denies their power) to govern the State. This *jus majoris*, he says, is not derived to them, from the law of nature; ("that, with all its principles, is swept away,") nor from the exigencies of society; nor from the nature and necessities of Government; nor yet from any Conventional source, which can only be by an express provision in the present Constitution. *Argumenti gratia*, let the gentleman be right, and for this purpose let it be conceded that the majority could only derive this right, if at all, from some one of those repudiated sources. His conclusion then is, that a majority of freemen in this free land are not possessed of the right or power to govern. But Government there must be, or we instantly sink into anarchy. Pray whence, then, will the gentleman derive the power in question to the minority?

Surely he will not go back to the natural state, where force prevailed. That state of things "with all its principles, was swept away," when the present Government was formed. He cannot deduce this right from the exigencies of society; nor from the nature or necessities of Government; nor if not from these sources, can he claim the right from any thing written in the Constitution or Bill of Rights. These look to, and declare the rights of the majority. Every source by which the right of governing could be derived to the majority, is repudiated by the gentleman's argument, and the same argument, conclusively denies the right claimed for the minority; and if the gentlemen are right, we are now in a perfect state of anarchy, which, we know, is not true.

Both gentlemen have, as I have before stated, admitted, that, but for the possession of slaves, in great masses, by the minority, residing mostly in a particular part of the State, the rule of the majority would be safe now. But this property they fear to subject to the Legislation of a majority, lest it might be oppressively taxed. Against this abuse the majority had labored to suggest a satisfactory guarantee; but nothing which their ingenuity could invent was satisfactory. Each plan was denounced as mere paper work, which the majority might disregard when invested with power, and that to complain of this, would be like appealing from Cæsar to Cæsar. To maintain the insufficiency of any Constitutional guarantee, it is insisted that neither the dictates of duty, the obligations of oaths, of conscience, and honor, are any thing when interest is concerned. That interest is the tyrant passion which can never be controlled. Gentlemen have gone so far in their zeal, as to declare that there are no principles in Government at all. We are candidly told that the minority can accept no security at all except in representation; that the majority in this free land, cannot be trusted by the minority; and that unless the minority can be protected in the way they claim, they never can, nor will be satisfied; and it is to be feared, that their discontents may break out in something serious, because there can be, as they say, no security except in representation; that is, in the power to govern the State, and thus to rule the majority. This was the language of both gentlemen. Take away the gilding, what is it? The pill which could not be swallowed last winter; the black ratio again; not of three-fifths, but the whole. They say to us, "we have many slaves, and you have few, or none. The possession of this property by us, although it is not your crime, is the reason, however, that we claim to exercise over your persons, lives, and property, despotic power;" (for Government in the hands of the few is always despotic, whether it be called an aristocracy, or an oligarchy, it is still despotic;) "and though it be a despotism, yet we must claim, and you submit to it, as nothing else can secure us against your rapacity."

We are complimented, it is true, with many expressions of kindness; of confidence in our integrity; in our generous and liberal feelings. But then the most serious fears are entertained of our children. It is feared, that forsaking the example of their

fathers, they will become freebooters; not that they will plunder their immediate neighbors, nor that they will have courage enough to attack the minority with open force. The fear is, that the rights of the minority may be invaded by a system of Legislative rapine, because "there are no principles in Government."

Were we disposed to act in that manner, or should our children be so disposed, it would only be necessary to look at the census of 1790, and the tabular statements since made, to enable you to discover how feeble would be the resistance you would shortly be able to make to such violence. You may there see, that a race is rising up with astonishing rapidity, sufficiently strong and powerful to burst asunder any chain by which you may attempt to bind them, with as much ease as the thread parts in a candle blaze. I refer gentlemen to the documents furnished us, to shew them how vain must be the attempt to impose a yoke, and how illusory the hope that it will be long worn.

In 1790, the whole white population east of the Blue Ridge, was 314,523, and the whole population west, 127,334; 1800, east of the Ridge, 336,389, and west, 177,476; 1810, east of the Ridge 338,837, and west 212,726; 1820, east of the Ridge 348,873, and west 254,308; 1829, by estimate, east 362,745, and west 319,516.

The balance of white population in 1790, in favor of the east was 185,932; in 1800, 159,903; in 1810, 126,114; in 1820, 94,965; and by estimate in 1829, 43,229.

In the first district, lying between the Alleghany and the Ohio, the increase of white population is truly surprising. In 1790, it amounted to 38,834 only, and in 1829, to 181,384, being nearly five times the number in 1790; and having increased by a ratio of 242 $\frac{1}{2}$ per cent. Within thirty years more, that district will contain a population more than equal to half the present white inhabitants of the whole State, if the same ratio of increase should continue. During the same period, the 4th district has only increased its white population 15,754, being at a ratio of eight per cent. only; and in the last year but little more than two per cent. This vast change is effected in thirty-nine years; a considerable period indeed, in human life, but a very short one in the life of a State. The whole population in 1790 was 442,117, and in 1829, 682,261. In 1790 the whole slave population was 292,627, and in 1829, 448,294. By which it appears that during a period of thirty-nine years, the white population has increased at a ratio of 36 $\frac{1}{2}$ per cent. only, and slave population 44 $\frac{1}{2}$, notwithstanding the drains made from the latter by sale and otherwise. The increase of free people of colour is yet more surprising. In 1790 this class amounted to only 12,866, and in 1829 to 44,212. This increase of coloured population, is a subject of regret and alarm. I looked over these statements of population last evening, and noted them down, with the different principles disclosed in this debate. This I did both for present and future use. A view of them will enable my constituents to appreciate the arguments and claims of the minority, and to discern, if we should be successful in reforming the Government as we hope, the depth of that gulph of political degradation, which was prepared for them, and from which they will have, happily, escaped! The arguments of the friends of the minority here, look to our perpetual slavery; for they maintain that the great mass of slave property, not only is, but always must be, in the east, because, they say, both the physical and moral constitutions of the western people, forbid the adaptation of that species of property to their uses. At the same time, it is admitted, that if a majority of white population is not now in the west, it will soon be there, and there increase forever. It will not vary their principles in the least, if at a future time, ten white men should be found west for one in the east. Their principle is, that the owners of slave property, must possess all the powers of Government, however small their own numbers may be, to secure that property from the rapacity of an overgrown majority of white men. This principle admits of no relaxation, because the weaker the minority becomes, the greater will their need for power be, according to their own doctrines. This, to be sure, is pushing their argument *in absurdum*, but the fault is in the argument, that it admits this criticism. It applies to a case far distant, in point of time, I own, when the tide-water population will be, to the whole, but as a drop in the bucket. East of the mountain, slaves are increasing more rapidly than whites. Between tide and the Ridge, this increase is truly alarming. In a short time, such will be the preponderance of numbers in the west, that the citizen will scarcely know where to find the power that rules him, and will be induced to ask with astonishment, to whom it is that he must submit? I say again, this western increase must proceed. It cannot be checked; it will go on while the east oppressed by the increasing weight of another race will be stationary; and if you have cause to fear us now, that cause will increase, and with it your fears and desires for power. I will not stop here to inquire into the causes of this western growth, but I can satisfactorily shew why it has not been much greater. In 1796, the United States' offices were opened for the sale of a tract of country separated from us only by the Ohio, at two dollars per acre. Ever since then, masses of public lands near us, have been brought into market in Ohio, Indiana and Michigan, first, at the price I have mentioned, and last, at one dollar and twenty-five cents. These land markets checked emigration to western Virginia from

other States, and drew off some of its native population. Ohio is now filled up, and the lands nearest to us in Indiana and Michigan, are very generally sold out. The remaining land markets are removed farther west, and to countries less inviting. It is owing to these circumstances that the ratio of increase during the last nine years, has been greater than during the nine or nineteen years preceding. The proximity of those land markets, have had an effect on all Virginia, but more especially beyond the Alleghany.

With the present state of population in view, and contemplating the prospects before us, with the full belief that upwards of 400,000 white people are with us, and that we are the majority at the present moment, should we be weak enough to agree to your terms, and submit ourselves to your Government, what would our indignant constituents say when a Constitution founded on your claims of superiority should be presented to them? They would scorn to accept it, and displace us from their confidence forever.

The Committee will be good enough to indulge me while I submit to their consideration a few reflections. We have often heard that wealth gives power, or that wealth itself, is power. By this axiom I suppose, is meant nothing more than the natural and moral influence which wealth gives to the possessor, by increasing his means of doing good or evil. Whenever power is directly conferred on wealth by Government, the additional power thus conferred, is a corrupt one. It is a *privilege* conferred contrary to the Bill of Rights, because not conferred for *merit* or *public services*. It is too, an *exclusive* privilege in its very nature. It is an immoral distinction that is conferred, because it makes no discrimination between the possessors of estates honestly acquired, and those of ill-gotten stores.

Perhaps no blessing of this life is so transitory as riches. To-day you are rich and powerful; to-morrow poor and despised. This thing property, while possessed, makes you a Sovereign, and the loss of it a slave.

We have long been in the habit of considering this Ancient Commonwealth, as the freest and happiest in the world; our Constitution as the best on earth, and ourselves the most fortunate of men. What would the citizen of another State think, or how would he feel, at the sight of an hundred wretches exposed to sale, singly or in families, with their master's lands, if in addition to the usual commendations of the auctioneer to encourage bidders, he should hear him tell them, that if they should purchase his goods, they would instantly become Sovereigns in this free land, and the present possessor would become their slave? Do I misrepresent or exaggerate when I say your doctrine makes me a slave? I may still live in the west; may pursue my own business and obey my own inclinations, but so long as you hold political dominion over me, I am a slave. We are a majority of individual units in the State, and your equals in intelligence and virtue, moral and political. Yet you say we must obey you. You declare that the rule of the minority has never oppressed us, nor visited us with practical evil; but of this, we are the best judges. We have felt your weight and have suffered under misrule. We never expected you to acknowledge this. You are not competent judges. It was not expected that you would make this acknowledgment, or part with power willingly. To do either, would be to furnish a precedent of the first impression.

We do not know to a certainty, what districts may vote with us, but if the results of the public polls furnish any sure indications, our strength in the community is to the minority as 402,000 to 280,000 souls. And if this be so, the heroic resistance made to our claims, proves a degree of moral firmness, equalled only by the moral worth of those who make it.

Among the propositions of the gentleman from Northampton, there was one which I wish to notice more particularly; that a majority in society, means not a majority of men, but of men and interests.

[Judge Uphur explained.—He did not intend to say, this was, of necessity, the case. He had said, that in fixing the apportionment of representation, there must be a majority of interests, and it did not necessarily follow, that it must be a majority of any particular character. It might be a majority of the units of society.]

Mr. Doddridge.—I did not misunderstand the gentleman. I understood him to say, that a *majority* combined of men and interests, did not necessarily mean a *minority* of men, but might possibly contain but a minority.

[Judge Uphur.—He had supposed the Government in operation, and he had never contended, that in the Senate and House of Delegates, a majority was not the proper rule. But we are engaged in the formation of a Government, and it is for us to say out of what elements that majority is to be formed. You may get one out of numbers alone, or out of numbers and property. In a state of Government a majority is the rule; but we are here assembled to fix the original law as to the materials out of which the majority shall spring, and we may determine whether it shall be composed of one element or of both.]

Mr. D. I am sure I understand the gentleman. The doubt is as to that majority which the Bill of Rights declares have the power to alter or amend the Constitution: whether the majority there spoken of, is composed of men, or of men and wealth. Surely the Declaration of Rights means numbers alone: that is the plain English of the text, which might be safely left to the decision of any man or woman, having a common knowledge of our mother tongue. Local interests, and slave property, existed in 1776, as well as now. These interests and localities bore the same relations and ratios to each other as now, yet they are neither alluded to nor provided for by the Bill of Rights or Constitution. Had it been intended to take property into the scale of representation, this silence could not have been observed. This brings me to the conclusion, that slaves were not regarded in 1776 as an element of society, but merely as property. The Convention of that day, left representation where they found it; based on the freehold qualification, just as it had been based in the Colony, when there was scarcely a slave in it. It results, that while gentlemen are demanding representation for this species of property, they are demanding a new thing, and are proceeding on a principle never before recognized in the Colony or State; while we are only endeavoring to assert those personal rights which spring up in every society, and can be absent from no Government or creature on earth. I therefore repeat, that when we demand equal political rights for ourselves, our constituents and posterity, we demand no new thing. It was never known before, that constituent powers were to be created out of a compound of this character. They certainly demand a new thing, who thus would exalt a minority into rule, and require a majority of free citizens to submit their persons and properties to their dictation.

I will now call the attention of the Committee to the state of our representation in this body. We have been elected here by a ratio marked by injustice. The Senatorial apportionment of 1816 was founded on the Census of 1810, which was unequal, to be sure; but that was then the last enumeration to which we could refer. In this body, we are apportioned by the same Census of 1816, although that of 1820 was in being, and could have been resorted to. For this injustice, no reason was, or ever will be assigned, except that those who practiced it, had the power to do so. This measure was a poor expedient for appeasing a discontented people. By it, the west were deprived of more than four members on this floor. By the Census of 1820, we were entitled to 40 293-603 members, instead of 36, and by the present population to 42 229-682. Yet, notwithstanding this injustice, I hope the cause of the people will triumph. The majority here may be small indeed, but I hope they will represent at least two-thirds of the inhabitants of the whole State.

One word more respecting the slave property, the increase of which is the subject of some uneasiness. To allay this uneasiness in some degree, I will state what I rather anticipate and fear than hope, because I have no desire to see the slave population of my country increased. This property will hereafter find a market, to some extent, in western Virginia. It has heretofore been of but little value near the Ohio river, because runaways received aid and protection from the people in the new territories and States. The State of Ohio, at an early day, passed a law requiring all people of colour migrating thither, to give bond and security to save them from becoming a public charge, and I believe to be of good behaviour. A general belief had prevailed, that this law was unconstitutional, and it went unexecuted, until lately. The Supreme Judges of that State have decided in favor of that law, and as their blacks cannot comply with it, they must remove. It is supposed their only retreat will be in Canada, as the people of Indiana and Illinois must follow the example of Ohio, in self-defence. In western Pennsylvania, public feeling is so far changed, that instead of the facilities heretofore afforded to fugitives, the master meets with no obstructions, but is even aided. Matters in Canada must soon take a turn. I have no doubt that there are many western citizens who will purchase slaves again, when the causes before mentioned, shall render the property secure. These considerations, with the acquisition of Texas, will greatly enhance the value of the property in question.

Mr. Chairman, I acknowledge my gratitude to the Chair and the Committee, for the attention with which they have listened to my remarks, desultory as they have been. Having been hurried into the discussion, without proper arrangement of materials, they require your indulgence.

Mr. Green rose, for the purpose of correcting a misapprehension into which the gentleman from Brooke (Mr. Doddridge) had fallen.

He had not, as that gentleman seemed to suppose, proposed, or supported, his amendment, merely as a security to slave property from excessive taxation: property of every other kind, was liable to the same sort of injustice: and he should have proposed the amendment, if there had not been such a thing as a slave in Virginia. The gentleman must remember, that two-thirds of all the taxable property in the State, was owned east of the Blue Ridge.

The question was now propounded from the Chair: when, after an extended pause, the Chairman rose to take the vote; whereupon, Mr. Leigh of Chesterfield, moved that the Committee now rise: the motion prevailing, the Committee rose accordingly, and thereupon, the Convention adjourned, to meet to-morrow, at eleven o'clock.

THURSDAY, OCTOBER 29, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Parks, of the Methodist Church.

The standing order being read by the Clerk, Mr. Doddridge moved that the Convention proceed to execute the Order of the Day, which was accordingly agreed to, and the President called Mr. Stanard, of Spottsylvania, to the Chair.

The Chair having again stated the question before the Committee,

Mr. P. P. BARBOUR, of Orange, rose and said, that as the gentleman from Chesterfield (Mr. Leigh,) was entitled to the floor this morning, according to Parliamentary usage, I think it proper to state to the Committee, that I am about to occupy it with his consent. I am afraid, indeed, that I shall offer a very poor equivalent, for the rich repast which that gentleman would have spread before the Convention; but I have this consolation, that though it will be delayed, it will not be ultimately lost. But, Sir, I consider it a duty, which I owe to myself, to my constituents, and to the respect which I entertain for the opinions of my fellow-citizens of the Commonwealth at large, to state some of the views which I have taken of the subject under discussion, and to vindicate the course, which I feel it to be my duty to pursue. In doing this, I promise to be as brief as I can, consistently with rendering myself intelligible. I would do so, at all times and under all circumstances; but on the present occasion, I have the additional reason, that the able argument of the gentleman from Northampton, has relieved me from much of the labor, which would otherwise have devolved upon me; and I shall be much gratified, if it shall be in my power, to strengthen some of the strong points which were so ably occupied by him. I do not remember in my life, to have felt so deep a sense of responsibility, as on the present occasion; nor is this at all the language of affectation: I speak it in the sincerity of my heart. On former occasions, as a member of a deliberative assembly, I have been engaged in giving execution to the provisions of an existing Constitution; under such circumstances, if I should have chanced to fall into error, it would have been such, as would have found a speedy remedy in the ordinary process of legislation; but now, I stand on different ground. I am called upon, to aid, not in executing an existing Constitution, but in the creation of a new one; a situation, in which error, though not wholly irremediable, must continue for a considerable time; and if corrected at all, can only be corrected by the original power of the people, in their primary capacity, or in such other mode as may be adopted for the amendment of their organic law.

The task imposed upon us, is one of the grandest and most solemn import. We meet together as the representatives of a great community, to mingle our counsels for the common weal; to lay the foundation of a Constitution, which shall secure the permanent happiness and prosperity of a great Commonwealth. It has been the fate of most of the nations of the earth, to have a Government imposed upon them, without the least participation of their own will; it is our good fortune, on the contrary, both in our character of an individual State, and as constituting an unit in our great confederacy of States, to have a Government of our own choice. We meet, free as the air which we breathe, not only unawed, but uncontrolled by any earthly power, save only, the power of the people, who gave us our political existence; and before whom, as the ultimate arbiters of their own destiny, the work of our hands, must pass for their approval. I feel, Mr. Chairman, not only the importance and solemnity of the trust, but a more than usual deference towards the body which I am addressing. It is composed of individuals, all of whom have participated in the councils either of their native State, or of the United States; and some of whom, assisted, more than half a century ago, in laying the corner stone of the Constitution of this ancient Commonwealth, the first Representative Republic in the world, which we are now about to remove; and who as chiefs, either of the Executive or Judicial Departments of the Federal Government, have, for a series of years presided over the interests of our common country. If under these circumstances, I shall be somewhat embarrassed, in presenting my views to the Committee, they will perceive in my situation, an ample apology.

The most important of all our duties, is the organization of the Legislative Department of the Government; it is in that Department, that the public will is concentrated; since from it must issue in the form of laws, those rules of action, which control the

lives, liberty and property of the people. Not only is this the most important Department of the Government, but the immediate question now under discussion, is the most important one, which the organization of that Department involves. It lies at the very foundation of our civil edifice; and it becomes us to examine, with the most guarded caution, how we lay it. The report of the Committee on this Department, has recommended, that in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively. An amendment has been offered by my friend from Culpeper (Mr. Green) which proposes the adoption of a compound ratio, consisting of the number of white population, *and taxation combined*. The precise question now to be decided, therefore, is between these two propositions. It will be my part, to endeavor to show, why the proposition of the gentleman from Culpeper, ought to be adopted.

With this view, let us first examine the arguments adduced in support of the other plan. At the threshold, we are met with a principle laid down in the Bill of Rights, *that all men are by nature, equally free*. And here, I cannot forbear to remark, whilst I am not controverting the position, that it appeared to me, to be singular, that the gentleman from Brooke, who relied so much upon this principle, denied the authority of the Constitution of the State, at the very moment when he was calling to his aid, that of the Bill of Rights, though confessedly, they both rested upon the same foundation, and consequently are of equal obligation. But let that pass. I shall not stop to enquire, whether this principle is, or is not abstract in its nature. But this I will say: That this, as well as every other principle in the Bill of Rights, is to be modified, by reference to the time when, and the circumstances under which, they were declared, and by reference also, to the people on whom they were intended to operate: otherwise, if you give to the language, all the force which the words literally import, (and they are, I believe, but an echo of those in the Declaration of Independence,) what will they amount to, but a declaration of universal emancipation, to a class of our population, not far short of a moiety of our entire number, now in a state of slavery? And if you were to give to such a declaration, its full operation, without the modifications which I have stated, you might as a natural consequence, soon expect to see realized here, the frightful and appalling scenes of horror and desolation, which were produced in St. Domingo by a declaration of much the same tenor, issued by the famous National Assembly of France. I do not believe, Sir, that such is the intention of those gentlemen who rely upon this principle, in support of their proposition; I only meant to show, that if we would come to a right conclusion, in interpreting the meaning of this declaration, we must look at it, according to the condition and circumstances of the people, to whom it was intended to apply, and on whom it was expected to operate.

The principle taken from the Bill of Rights, is, *that all men are by nature, equally free*; and the conclusion which gentlemen draw from that principle, is, that therefore all men are entitled to an equal share of political power. With due submission, this conclusion is, in my estimation, wholly inconsequent. Suppose that all men are, by nature equally free: what sort of connexion has that proposition, with the civil and political rights growing out of the nature of Government?

Need I remind the Committee, that it is the very nature of the social compact, that all who enter into it, surrender a portion of their natural rights, in exchange for which, they acquire other rights derived from that compact, and dependent upon it, both in character and extent? Is it not a solecism, to say, that rights which have their very being only as a consequence of Government, are to be controlled by principles, applying exclusively to a state of things, when there was no Government? The question is, what are the political rights of the citizens? These political rights never existed, till Government was instituted. The same charter which created that institution, can alone create and define them; and yet in deciding this question, we are gravely asked, to refer, not to the charter itself, but to those original principles of Natural law, which not only existed, when the rights, whose extent is to be measured by them did not exist, but which in their very character, are in direct contradistinction, from those which govern the social state. Thus to exemplify: the present question is, what shall be the basis of representation? This term, by an irresistible association, conducts the mind to the idea of election; election necessarily involves the relation between the constituent and representative; and this relation derives its whole existence from Government: it did not, and could not exist before. Surely, then, it is only necessary to state the position, to show that it is utterly inapplicable to the case before us. No laws, no rights, can possibly bear on relations, which have subsequently come into being: relations, which belong to an entirely new state of things, and which state, has principles of its own, derived from the instrument which created it.

But, suppose it to be conceded, that the rights pertaining to a state of nature, and a system of rules deduced from the circumstances of that state, *had* relation to the subject; I ask, is the argument of gentlemen consistent with itself? They are themselves at the very outset, constrained to admit, that there are whole classes of persons,

and numerous classes too, who are not entitled to political rights. Many of these have been already enumerated by the gentleman from Northampton: females, minors, paupers, convicts; and I will add, aliens. Now, Sir, females alone constitute a moiety of the human race; if to these be added all the minors who have reached years of discretion, and all the other classes under the acknowledged ban of exclusion, there is an overwhelming majority of the whole population. But how come they to be excluded? Is it by the provisions of the social compact? If that were the principle, it would be intelligible. Is it by the laws of nature? I should answer no. For those laws, of all invariable things, are the most invariable: they are the same yesterday, to-day, and forever, (so far as human affairs are concerned,) until modified by the ordinances of society. They operate upon all persons, of all countries, at all times, and under all circumstances. For example: the rights to life, liberty, and the products of labour, are natural rights. Are there any persons in the world, who by nature are not entitled to these? (I speak not now of the influences growing out of the domestic relations.) I answer without hesitation, none, no, not one. How then can it be said, that the laws of nature refer to the subject, since those laws are uniform and invariable; and it is conceded, that these political rights, are neither uniform, nor invariable, but subject to great diversity and exception? Sir, the concession that gentlemen are constrained to make, that all are not equally entitled to these rights, involves inevitably, the further consequence, that they are not regulated by the laws of nature; for *diversity* cannot be the effect, where *uniformity* is the cause.

But it is said, that two of the enumerated classes, to wit, females and minors, are excluded, by the laws of nature, for the want of *free agency* in both, and the want of intelligence in the latter class. The want of free agency is founded upon the idea, that these two classes, are subjected to the dominion of men. Let us first examine the condition of females in a state of nature: I call upon any gentleman to shew me a principle of natural law, which will sustain their exclusion, to the extent which is thus laid down. I will suggest one case, in which surely they could not apply their principle. We read of a nation which once existed, (I refer to the nation of the Amazons,) in which there were no men: the society consisted of females alone. Here, beyond all question, the principle could not be applied. But suppose a nation made up both of men and women. Can any gentleman shew me a reason drawn from *nature*, which subjects females, *as such*, and because of their sex only, to the dominion of men? Men might indeed govern them by a greater physical force; but so also, might they govern in the same way, all men as well as women, who were weaker than themselves. I repeat, that if gentlemen have found any such principle of natural law, they have had access to fountains of information, which are inaccessible to me. A female may change her relations by entering into the married state, and impair her original rights, to the extent of the obligations contracted by this change. But a female who is of mature age, and unmarried, is in possession of all her rights; those rights are by nature the same with those of the other sex; and men, merely as such, have no natural right to exercise any control over her whatsoever. And yet the reason assigned, for excluding females from the exercise of political rights is, that they are under the dominion of men. When a female is married, and the relation of husband and wife exists, then the power of the husband, is co-extensive with his duties; but co-extensive only. The utmost bound, therefore, of the dominion of men, even over married women, is limited to the circle of domestic relations. Gentlemen would find it difficult to prove, that if a woman were the wife of a man, blindly attached to despotic Government, she would be obliged to sacrifice the enjoyment of all the blessings of civil liberty, to his whim, by being constrained to abide there against her will. It will not be contended, that females are to be excluded for the want of *capacity*. I will not fatigue the Committee, by quoting many examples to prove the contrary. History presents us the records of multitudes, who have been illustrious in literature, in arms, and in council. Writers have selected the reign of Elizabeth, as one of the brightest periods of English history; and with respect to the II. Catharine of Russia, I need only remind the House of a single incident, which occurred in years long past by, but which proves the prophetic grasp of her mind, and which is illustrated by the almost literal fulfilment of the prophecy, in the events passing in Europe at this very hour; I allude to the fact, of her having inscribed over a splendid gate, which she erected, near the frontier of her empire, "*This is the road to Byzantium.*"

Let us look for a moment at the case of the minor: the father's power over him is precisely co-extensive too, and co-extensive only, with his duties, to wit, maintenance, education, &c.: from the moment that he is able to take care of, and provide for himself, he is by nature, utterly free from the control of his father; his subjection was only during his dependence; remove the one, and the other ceases.

Municipal laws have fixed arbitrary periods for the maturity of man, and his independence of paternal control: by some, it is fixed at twenty-one years; by others at twenty-three, and differently in others: nature has settled no period of months or of

years: by her laws, whensoever he shall acquire strength of mind and body to provide for himself, from that moment, he is under no control on earth.

Is the argument consistent in another particular? Gentlemen say that taxation must in no degree, be permitted to form a constituent element of the basis of representation. Representation, say they, implies constituents; taxation does not. Well, Sir, does not the same reasoning apply, to exclude from the estimate of numbers, as a basis of representation, all who are excluded from representation itself? If you must exclude taxation, because it has no constituent for its correlative, does not the same reasoning apply to all, who do not possess the elective franchise? They, too, must be excluded from the basis; and so upon gentlemen's own grounds, that basis, instead of extending to all the white population of the Commonwealth, should be confined to voters alone.

The gentlemen have pressed upon us certain other positions from the Bill of Rights; the declaration that all power resides of right in the people, and that a majority, may alter, rescind, or new-model the Government at pleasure. I shall not call in question the truth of the doctrine, that all power resides in the people, nor is it necessary to enquire into the truth of the next proposition, that a majority of the people may alter their Government at pleasure. These two propositions, if I rightly understood the able argument of the gentleman from Brooke, were brought to shew that a majority must necessarily have the control in every free Government. I shall not retrace the ground so well occupied on this subject by the gentleman from Northampton, except so far as to confirm the truth of one of his remarks. As to any original and inherent right of the majority to rule, it could not exist, antecedently to Government. Majority is a relative term. It implies an interchange of opinion among persons convened for council, and whose decision is to control the action of the whole number so assembled, or of others connected with them. But this state of things could not exist in a state of nature. Nothing in the shape of Government belongs to that state. Each man stands upon his own intrinsic rights. Nay, so far does one writer carry this principle, as to maintain that, in order to form a social compact, which shall bind all those who enter into it, perfect unanimity is necessary among them all: and though the whole family of man were to enter into such a compact, if one single, solitary individual refuses his assent, the compact has no binding power as it respects him.

I do not say that to carry the doctrine to this length, meets my approbation. Permit me, while we are on this subject of majority, to make a few additional remarks. Some writers give us a very quaint and affected account of it. One of great celebrity, so defines the power of the majority, as to declare, that when a man is called upon to vote, he is not to vote according to his own opinion, but according to his notion of what is the public will: and if it shall turn out that the majority is against him, then it only appears, that he has mistaken the public will. I do not say that I adopt any such sentiment; but I mention this, as an example of one, among the infinite number of theories, which have been broached on the general subject. Sir, is there any rule, for the dominion of a majority, so invariable, as the gentleman seems to suppose? To test this, let us look at the history of our own country; both in the State and the Federal forms of its Government. Surely, if the gentleman is correct in supposing, that the right of a majority to rule, is derived from a natural law, it ought to have that character of uniformity, which distinguishes all such laws; and then it could not be subject to such multiplied exceptions, as we find to exist in fact, in its practical operation. Look first at the Federal Government, whether in its Executive, its Legislative, or its Judicial Department; and we shall find, that a majority is, in many instances, subject to the control of a minority, greater, but by a single unit, than *one-third* of the whole. If the President of the United States, shall refuse to sign a bill, passed by both Houses of Congress, and shall return that bill to them with his reasons for such refusal, the consent of two-thirds of the members of both Houses is requisite before such bill can become a law.

The Senate of the United States hold a double capacity, being a branch, as well of the Executive, as of the Legislative Department of Government; and when it acts in its Executive capacity, two-thirds of the members present must concur, before any treaty formed by the President, can receive its due ratification. Here, again, and in concerns too, of the utmost importance, a majority is subject to the will of the minority. So, in the Judicial Department, (the quasi Judicial, at any rate, for the Senate when it sits to try impeachments, is, in fact, a Judicative power, and acts entirely in a Judicial character;) when the Senate thus sits, two-thirds of the members present are necessary to convict the party impeached. Here, again, is found a minority, controlling the will of the majority.

Again, Sir:—Let us now look nearer home. What is our system of elections, as it exists in Virginia, and in most of the States of the Union, when brought down to its actual practical operation? Is it a majority only, which in each election district, has the power of sending a Delegate, to either House of the Legislature? No, Sir, a simple plurality enjoys that power. If, then, in a certain district, there be ten candidates

set up, and neither one of the ten shall receive even *one-fifth*, (far less a majority) of all the votes given, yet, if he receive but a single vote *more* than either of the other candidates, he is returned to the Legislature as duly elected. And though so elected, he is to all practical purposes, the representative of *all* the people of that district; yet a majority of four to one was opposed to his election. Does the majority rule here, Sir? I need not refer to the well known case of our Juries, where the vote of *one* man balances the vote of *eleven* men; yet such an arrangement is thought wise, and has, for centuries past, challenged and received the admiration of all reflecting men. So far, then, from the rule's being a universal one, in all free Governments; in our own Government, the freest upon earth, a minority of one-third controls a majority of two-thirds: A minority of one-fifth may control a majority of four-fifths: Nay, Sir, a minority of one, does every day control a majority of eleven. It is not as gentlemen say, that a minority governs a majority; no, Sir, the minority under certain circumstances, not having the power of action themselves, are enabled to control the action of the majority: in the language of Tully, in relation to the Tribunes of the people at Rome, they have not the power to do mischief themselves; they have only the power, to prevent it from being done, by others. Let us pursue the chain one link further, and let us bring the principle into the Halls of Legislation. It is susceptible of mathematical demonstration, that you can have no certainty of hearing the voice of a majority of the people of any State, unless that State votes by a general ticket. Much as that practice has been objected to, as applied in another election, it may be demonstrated, that in many, if not in most cases, a will prevails, which is contrary to the will of a majority of the people. For example: If all the people of Virginia should assemble on one day, I do not say in one place, but at their several polls, and should all vote for the same individual, a majority of their votes would, no doubt, express the will of a majority of the people. But on any system of practical election, your State must be cut up into *districts*, and as the fractional minorities of these several districts, like the fractional minorities in different States, cannot be transferred from one district to another, it may happen, and does happen, that an individual may be elected contrary to the will of a very large majority of those who voted in the election; and then, of course, so far as representation is concerned, there is the will of a great majority against any measure which may be passed by Delegates so chosen.

What, then, is the conclusion to which I am brought by this train of reasoning? It is this: that there exists no such thing as a fixed, invariable rule, on this subject. The parties to the civil compact, in establishing a Government, and organizing its various Departments, impart to the system which is the creature of their will, such principles as they have found to be prudent and just. In politics, as in morals, the best test of propriety is practical utility. There can be no other. No other has ever been successfully acted upon. If you go to mere *a priori* principles, then a pure, unmixed, democracy would seem the best form of Government: but the experiment has been, long ago, abandoned; and why? upon grounds of practical utility.

The next step, in theory, is, that every one should vote: but this plan is abandoned even by the friends of the present resolution: and why so? for the same reason as before, it cannot bear the test of practical utility. The same principle applies to any other subject of enquiry. A majority of the people have a right to re-model the Government, in any way they may consider as most promotive of the public welfare. We, Sir, are now the representatives of that majority. What do we judge most for the public weal? Even if the doctrine of the power of the majority be conceded, it is only necessary to point gentlemen to what is daily the fact, to shew that the people, though they may not act nominally by a majority, yet do so substantially, and in effect. Suppose we shall determine that a mixed basis of representation is to be preferred to a basis of numbers only; then whether the voters be, as individual units, a majority or not, yet there would, in truth, be a majority of the people acting: all the members of the community would stipulate with each individual member, and each individual would stipulate with all the rest, that this shall be their form of Government. Because whatever should be afterwards done, no matter by whom, if according to the Constitution, would be done by the will of the majority, because the Constitution itself, would have been ordained by that will. A Judge sentences a prisoner: the Judge is a solitary individual; but he acts by the force of law, which law is created by a majority of the people acting through their representatives, whom they have appointed their agents to make the laws. The effect, therefore, is precisely the same as if the sentence of the Judge had been pronounced by a nominal majority.

If I am right, we must discard mere theory, adopt nothing on the ground of mere speculation, but proceed to men and things as they are. In the language of Solon, we must establish not the best *possible*, but the best *practicable* Government. We have our way open before us. There is no question as to our power to introduce what principles we please; the only question for us to ask is, whether the principle

be fit; whether it be mete and expedient; whether it will bear the test of practical utility?

In that view, let us then investigate the principle which is now offered for our adoption.

If, when men unite to form a social compact, they surrendered only their personal rights, it might very plainly be concluded, that numbers, and numbers alone, constituted the proper basis for representation. Upon the ordinary principles of contracts made between man and man, (for the social compact is only a contract of all the members with each individual member, and of him with them,) if the contracting parties surrendered only their personal rights, all would give, and, in return, all would receive the same equivalent. But when they surrender, not only their personal rights, but their *property*, there the inequality commences. One man brings one amount of property, another man brings a different amount. I would put it on the principle of compensation; the principle of equivalents. Is it right, that he who has surrendered only his personal rights, should receive as much as he who surrenders much more? But, it is said, that the man who surrenders his property to society, receives, as an equivalent, the *protection* of that property, and that the two go on *pari passu* together. This argument is plausible; and it would be sound, if he could have an infallible security, that the society, or the Government, which is the same thing, should never demand from him a greater contribution from his property, than merely what is requisite for its due protection. But we know that Government claims the right (and exercises it too) of drawing on the purses of all the members of the community, and expends hundreds, yes, myriads, and millions of money, on schemes of internal improvement, and a thousand other objects connected with the internal police of the country. When we come to this consideration, does not the argument fail? It is conceded to be a good argument as far as mere equivalent for protection goes; but when you come to contribution far *beyond* such equivalent, the argument is good no longer, but ceases and is at a stand. The eloquent and ingenious gentleman from Norfolk (Mr. Taylor) compared the relation between the protection afforded to property on one hand, and the taxes levied by Government on the other, to the case of the underwriter and the insured. But, I need not to remind that gentleman of what has been so well and so justly said, that nothing is so apt to lead us into error as a simile. If we commence an analogy upon a subject where it will not hold throughout, and where there are other and strong points of discrimination, of all sources of error there is none so fruitful and so fatal as such mistaken analogy. Government, the gentleman tells us, is the underwriter: agreed. We, he proceeds, who pay taxes, are the insured. Sir, if in this case, as in ordinary cases of insurance, we were allowed to state the premium we are willing to give, and then hear on what terms the Government were willing to insure, there would be some such analogy as he supposes. But if the underwriter may first demand what *premium* he pleases, and after taking that, may confiscate what portion of the *capital* he pleases, besides, the case is altered. To a gentleman so well skilled in mercantile law, as I know that gentleman to be, it is unnecessary that I cite authorities. I admit that if we had the exact rate of premium fixed by compromise, as between buyer and seller, the analogy he gives might be tolerably accurate. But where the underwriter has the whole matter in his own hands, and the insured is neither consulted as to the rate of premium, nor can be sure of not forfeiting a large part of his capital into the bargain, the argument falls and comes to an end.

Mr. Chairman, the object to be attained by the amendment, has been spoken of in some parts of this debate, in terms which indicate that gentlemen consider us as aiming to perpetrate injustice. Sir, if I know my own heart, I would not contend for any object on this floor, which I did not conscientiously believe to rest upon the soundest principle. I may be wrong in my conclusions: I may mistake the causes from which the suggestions of my judgment have proceeded; but one thing I do know, that I shall never advocate here, (whatever be the supposed case elsewhere,) any principle or measure which I do not most sincerely believe to be right. Sir, is the principle for which the friends of the amendment are contending, a principle novel and unknown? One of the most ardent whigs that ever advocated the cause of free principles, a man who has done more to promote the cause of equal rights and of Parliamentary reform than almost any man of this day in England, a man who has pleaded for a more expanded right of suffrage in that country than any of his associates, sums up his doctrine, and his demand in this: that the most just and adequate representation would be, that *which is in proportion* to the contribution of the different portions of society to the public expenses. Yet this man was an enthusiast for liberty, burning with a holy ardour in her cause.

It is urged that numbers only are required, and a property qualification entirely disregarded in many of our sister States. So far as this argument goes, I answer that in North Carolina a property tax of some sort is required in the election of Senators; in South Carolina, the House of Representatives is founded upon just such a com-

pound basis as this amendment proposes, and in Georgia, an allowance is made of three-fifths of all slave property, as in the Federal compact. And what is the fact in respect to our sister States to the East? In New Hampshire and Massachusetts, taxation, so far from being disregarded, is made the *sole* basis as respects elections to the Senatorial branch of the Legislature: and in reference to Massachusetts particularly, I say that the example is pregnant with useful instruction. The experiment there has borne the test of forty years experience; and when, a few years since, an attempt was made to alter this feature of their Constitution, after solemn argument, it was retained in her code. We are referred to the experience of our sister States: Sir, so far as *experience* goes, it is in our favor; so far as *experiment* is concerned, it is against us: and let it be remembered that there is a strong and marked line between the two. Experience is like the light of the sun, bright, constant, and uniform. Experiment is a meteor, transient in its splendor, and uncertain and irregular in all its movements. Talk to me of the *experience* of States which came into being but yesterday! Why, Sir, I have myself, assisted in the creation of some half dozen of them. States in their pupillage: or who have just escaped from it! tell the people of Virginia of an *ignis futurus* like this for their guide! talk about the result of an experiment in Government which began but yesterday! Sir, I beg leave to decline to follow any such guide. If I must have guide and precedent, I had rather look toward the steady habits of Massachusetts, where the experiment has continued forty years and more: and where that experiment was in the full tide of successful progress, when those States, to whose experience we are so reverently referred, were naught but trackless wilds, roamed by savages in quest of game, and who have not had time even for an experiment. Admitting that there was some analogy between the condition of Virginia, and States, in circumstances so different, still I say, let me have experience, which, according to Lord Verulam, is "the Mistress of the world," and not experiment, which is the worst of all possible guides. And why, Sir? There is not a farmer in your State, who will try an experiment, that is suggested to him, till he finds out that somebody else has tried it before him. Shall we trust to an authority like this, in laying the foundation of our Commonwealth?

A strong case was put by the gentleman from Norfolk (Mr. Taylor) to shew the injustice that might flow from taking property into the account, in fixing our basis of representation. He supposed a country to contain a few individuals of great wealth, and others who were in comparatively humble circumstances, where fifty rich men might, through the weight of their property, out vote two hundred and fifty poor men. We are far from contending for such inequality among voters, nor do we desire to see it prevail. In the same district, we would make all the voters equal, no matter how unequal their property. But how did the gentleman get to his conclusion, from such premises? I believe he would find himself puzzled to make out the middle term of his syllogism. His argument, however, has been already answered by the gentleman from Northampton, and the gentleman from Chesterfield, (Messrs. Upshur and Leigh,) and the answer is this, that there can be no danger of the rich oppressing the poor by Legislation, where both reside within the same district of the State, and, therefore, have a community of local feeling and interest. I have another answer to it. It is of the nature of a representative Government, that it stands on the basis of responsibility. The representative is answerable to those who gave him his power. But if we are to be taxed, as a people, by individuals, not responsible to us for their public acts, the Government is done from that moment.

I make a distinction between civil liberty and political liberty. Under a Government of an oligarchical, or even a monarchical form, civil liberty may, nevertheless, be enjoyed, and to a very considerable extent. For Princes, born to even a despotic throne, may perchance, be of a gentle and benevolent temper, and in no wise disposed to exercise the oppressive power with which the Constitution has invested them. Augustus, as we all know, svayed the sceptre of the world, during, at least a part of his reign, with clemency and forbearance. But this is not political liberty. I may enjoy a large measure of personal freedom under such a Government, but I enjoy it by permission, by sufferance merely. To convert this freedom into political liberty, it must be made mine of right, and I must have the means of securing it. Now, to apply this doctrine to the argument of the gentleman from Norfolk. The delegate, who resides in the same district with his constituents, returns back to them, and is responsible to them for his political acts; the citizens hold him by a strong cord; and if he has not been a good steward, he may certainly calculate on meeting his reward. But, how does this principle apply, when he who lays the tax, and they who are to pay it, reside in different portions of the State? He may vote ruin to his fellow-citizens in a distant part of the State, and never be called to account for it! They did not elect him, and they cannot call him to any account for his stewardship.

[Mr. Taylor here rose to explain: He said he had waited until the gentleman from Orange had completed his argument on this point; he had not risen to answer it; but solely for the purpose of stating the position he had taken, and the principle

on which he had relied, in the argument he formerly addressed to the Convention. What I say, observed Mr. Taylor, is, that our Government rests on the principle of equal rights, among all men who are worthy of political power; and I contend that on that principle rests the safety of our free institutions. If you fix the terms of qualification by a fundamental law, declaring who may vote, and who may not, then my position is, that there exists a perfect equality of rights, among all the voters thus qualified. If, in a district giving 300 votes, 250 votes shall not elect a representative, while the remaining 50 do elect him, I say that you destroy all free principle, and disguise it as you will, call it what you please, you do, in effect, establish an aristocracy, an odious aristocracy of wealth. You all oppose the admission of such a principle *within* your county lines; and repudiate it as aristocratical in its character. Why is it less aristocratical or less odious, when extended to districts, or to the State at large? These were my positions, and this was my argument.]

Mr. Barbour resumed. He had never knowingly misstated the argument of any gentleman opposed to him: and with due submission, he still contended, that he had neither misstated, nor misunderstood the argument of the gentleman from Norfolk. His argument, said Mr. B. was based on the equality of all the voters within a given district, and went to show that the same principle of equality ought to be extended to all other districts; and, in reply to this argument, I was going on to show the difference between the cases of a representative elected (by whatever rule) from the district where he resides, and returning again to that district, responsible for his public conduct, and that of a representative, chosen in *one* part of the State, and who has by his public acts, oppressively injured *another* and a distant part of it, to which he is not responsible, and by which he cannot be punished. And though rich and poor men, have an equal vote in the same district, yet there is safety to property, not only because there is a community of feeling and interest, but because of the responsibility which the representative thus elected, owes to all his constituents, both rich and poor, and who are interested in proportion to their respective property. And here permit me to make an earnest and most sincere disclaimer of all intention to impute to my fellow-citizens of Virginia, any thing like an improper purpose. I have no such belief whatever, but give to them all that credit for integrity of motive, which I claim for myself. But while *faith* is the surest of all foundations in matters of religion, the very reverse of faith, is the true foundation of all free Governments. They are founded in *jealousy*, and guarded by caution; nor can the spirit of liberty long survive among any people where this jealous vigilance is not kept in perpetual vigour. In Monarchies, its action is against the Monarch. Here, in the United States, so fully is it known and recognized, that the people have written it on all their gates, and exercise it not merely against their official agents, but even against themselves. To prevent the people of Virginia from being carried away, by their own partialities, into a premature confidence, they have themselves declared, that the people shall not elect any man to the House of Delegates, who is under 25 years of age, nor to the Senate, who is under 30. Sir, I speak of human nature as it is. I "nothing extenuate nor aught set down in malice." I draw no lines of partial discrimination: but I take my stand on the great principle which I have mentioned, that *not* faith, but the *reverse* of faith, is the foundation of all good Government, and that no nation is free, unless they possess *political* liberty, by which I understand the power to secure their own freedom.

We have heard much said against the principle of the amendment, as going in practice, to make an unjust discrimination in favour of the rich. But, gentlemen should recollect, that it proposes, within the electoral districts of this State, no distinction between the high and the low. But no man, Mr. Chairman, need to feel greatly alarmed, on the score of wealth among us. Those who have lived but for a few years, may see, from an inspection of the map of Virginia, how fleeting are all human possessions. The wheel of fortune never stands still, but is in a state of perpetual revolution. He who was on the summit yesterday, may be at the bottom to-day. It was well said that primogeniture, and the law of entails, are the two columns of Monarchy; and that the breaking down of entails, and passing the act of parcenary, secured a perpetual change in the possession of property. There exists not the slightest danger of a permanent concentration of wealth, in any one portion of our country, or among any particular class of our citizens.

With proper deference, I would take leave to suggest, that throughout a great part of this discussion, gentlemen have confounded *civil* rights with political power. An argument, which goes for the security of civil rights, involves considerations of one kind; while an argument for the distribution of political power, involves considerations of a very different description. All the individuals of the discarded classes, to which reference has already been made, are fully entitled to the enjoyment of civil rights. Minors, women, (for, in this respect, the ladies are as fully in possession of these rights, as any of the lordly sex,) and even aliens, except as to the tenure and transmission of real estate; and even that distinction has been gradually frittered

away to a mere form. When the question has respect to civil rights, no distinction can take place from age, sex, or any of the other causes which operate in the other case, unless, indeed, under circumstances of an extraordinary kind; but, when the question has reference to political power, then we must have respect to age, to sex, to birth; and a variety of circumstances, which go, in practice, to exclude from the possession of it, a large majority of every community. Here we must of necessity look at the condition of the individual, and determine whether he has the requisites for the enjoyment and exercise of that power. Some items of qualification, all must admit, the payment of tax, and some residence within the State, are required by the gentlemen themselves: they call the possession of these qualifications, a fitness for the elective franchise; while some of them have so far extended the qualification, as to require permanent residence, and either nativity or naturalization.

Now, then, the question comes back upon us; if it be right, because Government operates on persons, that persons ought to be represented; is it not equally right, that because it operates on property, property ought to be represented? Take the converse of this position; and how will it work? What would the gentlemen say to a Government where property only was represented and persons excluded? None of them would accord to it; yet we have an example of such a state of things in the Roman Government.

It is the distribution of the State into *centuries*, where property alone was taken into view. Afterwards, indeed, according to their usual course, that people went into the opposite extreme; and then the State was divided into *tribes*, in which people alone were considered, and property was wholly disregarded. In the State of Massachusetts, as I have already stated, they go to the extent of making property the only criterion in voters for one branch of their Legislature. But I ask, neither for *Comitia* by *centuries*, nor *Comitia* by *tribes*. I ask for a compound ratio of both. Both are equally at the command of the Legislature, and both need security against an abuse of power. *A priori* indeed; as it is conceded by all, that because the Government acts upon persons, they should be represented, so in like manner, as Government acts upon property, the owners of that property ought to have some representation in reference to it, as between the different districts of the Commonwealth. If this be true as a general principle, it applies emphatically to the particular condition of Virginia; in the eastern part of which, there is almost half the population, which, *as such*, would be excluded upon the white basis, whilst at the same time, that population *as property*, pays an enormous disproportion of the tax; thus presenting the striking fact, that the very cause which would forever keep down the eastern representation, much below its standard, would forever aggravate their taxation, far beyond a just standard. The amendment under discussion, proposes some remedy for this great injustice.

It is the natural desire of us all, to lay the foundations of this Constitution in such a manner, that it shall stand and endure. If that be our purpose, we must rest it on these two great columns: Persons and property. Withdraw either, and you have a weak and tottering edifice, which never can endure the shocks of time. If I might venture upon a simile, I would compare our Constitution to an extensive and delicate piece of machinery. If the engineer who devised its structure, shall so arrange its internal wheels, that they act in opposite directions, and on antagonist principles, the result must, of necessity, be, that its works can easily be put out of order, and that the machine itself is not likely to last. But, if, on the contrary, he shall so arrange the various parts, that all its wheels shall move in one direction; that all the principles of its action shall be harmonious and uniform; that there shall be no clashing of wheel against wheel, but all shall move by one law, and to one end; then the machine, while it reflects credit upon the skill and ingenuity of its author, will accomplish the beneficial purposes for which it was designed, and will continue to work, without needing any material repairs, to an indefinite period of time. We have an instructive warning on this subject in the history and fate of the Ancient Republics. Whenever, in any of their Constitutions, persons and property, were set in opposition to each other, the result invariably was found to be, heart-burnings, conflicts, confusion, bloodshed, civil war, anarchy, and finally, the utter and disastrous downfall of liberty, and the establishment of Despotism. I would place these two principles side by side, in perfect harmony. I would encourage nothing like distrust, or conflict between them; but would blend their action into perfect concert, and thus produce lasting tranquillity. If persons remained safely protected, beneath the overshadowing power of the State, I would have property protected too. On the other hand, the safety of property was put under the guarantee of the Constitution; I would build upon the same organic basis, the perfect security of persons. It is the interest of this great community to keep the provisions of its Government, safe and inviolate: make those provisions just, and then they will abide long; and the edifice of State, subject only to that infirmity which is the inheritance and the characteristic of man, shall stand for posterity, secure from internal danger, and equally safe, as I trust and believe, from external violence.

Mr. BALDWIN, of Augusta, after assigning his motives for addressing the Committee at that period of the debate, and his intention to present his views of the subject with as much brevity as practicable, proceeded to state the question under consideration. The resolution reported by the Legislative Committee, and the amendment proposed by the gentleman from Culpeper, present the question, whether representation ought to be apportioned equally amongst the citizens of this Commonwealth, who shall be admitted to the right of suffrage, according to numbers, or whether it shall be apportioned amongst them unequally, by adopting a basis compounded of numbers and taxation. It is a question, so far as relates to numbers, between equality on the one hand, and inequality on the other; and after the admissions made by gentlemen opposed to me in this debate, I may surely venture to assert, without much fear of contradiction, that according to the genius of our political institutions, whenever a question arises concerning the distribution of power, amongst the people themselves, the source of all power, the rule of equality ought to prevail, unless some good reason be shewn to the contrary. The gentleman from Culpeper (Mr. Green) and the gentleman from Northampton (Mr. Upshur) have both conceded, that under a Republican Government, it is correct, as a general rule, that the power of the State ought to be placed in the hands of the majority of its citizens; but they contend that peculiar circumstances may exist, which would render the application of that rule unjust and impolitic. On this occasion, they conceive that a sufficient reason to justify an exception, may be found in the contrariety of interests prevailing in different sections of this Commonwealth. If all the various portions of Virginia were entirely assimilated in territory, population, wealth and resources, neither of the gentlemen referred to, nor I presume any member of this Committee, would hesitate for a moment to approve the basis of representation proposed by the resolution we are now considering.

Notwithstanding the conflicting interests which some gentlemen suppose to exist between different sections of the State, none, I presume, are disposed to treat this controversy as a mere struggle for power. If it were so regarded, all discussion of the subject would be worse than useless. It would be mischievous. It would only serve to inflame our own minds, and scatter throughout the community, the fire-brands of discord. No, Sir, we all profess, and I trust sincerely, to be desirous of arriving at a correct conclusion, and to be engaged in this comparison of sentiments, for the purpose of obtaining light from the spirit of our institutions, the character and feelings of our people, the precepts of experience, and the dictates of sound policy. It has been said by several gentlemen in this debate, that all men are actuated by self-interest; and I have no objection to the proposition, when understood to embrace that noble and enlightened self-interest, which teaches us the love of truth and justice, and the sacrifice of all sordid and contracted prejudices, upon the altars of duty and patriotism.

In asserting the principles which in my opinion elucidate this subject, I shall not incur the imputation of indulging in abstract discussion; a mode of argument so much deprecated by some of the gentlemen who have preceded me, and which I acknowledge is less remarkable for its utility, than its intricate and almost interminable character. For my own part, Sir, having always regarded Government as practical in its very nature, I do not expect that we shall derive much useful information from the best constructed theories, though sustained with all the powers of intellect, and adorned with all the charms of eloquence. I was delighted, Sir, with the logical and beautiful abstract reasoning employed by the gentleman from Northampton (Mr. Upshur,) with the avowed object of proving that abstractions cannot be safely relied upon, in matters of Government. Let us leave, then, to school-men and sophists, all the theories concerning the origin and nature of Government in general, and save ourselves the trouble of enquiring whether it should be traced to patriarchal supremacy, physical force, or social compact. I would not dispute with any people, the propriety of any political system which they have thought proper to sanction by their approbation or acquiescence; even though they acknowledge the Divine right of Kings, and the duty of passive obedience, or boast the privileges and immunities extorted from the fears or conceded by the clemency of monarchs, or cherish the aristocratic notions of noble birth, subordination of ranks, and hereditary authority.

And yet, Mr. Chairman, I am far from admitting the broad proposition which has been asserted and reiterated in this debate, that there are no principles in politics. If, indeed, gentlemen mean only by this assertion, that there are no abstract principles of Government which must be regarded as true in all nations, in all ages, and under all circumstances, I should consider it a waste of time, to enter into any controversy with them upon the subject. But surely, Sir, there are principles of a practical nature, without which, no free Government can exist, and a frequent recurrence to which is indispensable, in order to justify and illustrate its institutions. A Government which rests upon public opinion, cannot be sustained without the aid of such principles; the result, if you please, of observation and experience, but sanctioned by

the reason and cherished in the affections of the people, and which may be confidently appealed to, on all important questions, affecting their safety or happiness.

Ours, Mr. Chairman, is emphatically a Government of principles : principles established by the wisdom, and consecrated with the blood of our fathers. It is certainly not our purpose to tear up the foundations of our political system, and establish a new one out of the ruins ; our object is to reform and amend, but not to revolutionize. Without, therefore, indulging in abstract theories, or referring to the systems of other nations, let us resort to those fundamental truths which constitute the basis of our own system. We shall find them all-sufficient for every useful purpose ; they will serve as " a lamp to our feet, and a light to our path," upon this or any other subject of our duties.

In this country, highly favoured, as we believe, by Heaven, and distinguished for its civil and political liberties, we recognize the sovereignty of the people, the fiduciary character of all public agents. We consider the people not only as the objects and subjects of Government, but as the governors themselves in the last resort, and the only safe depositories of unlimited power. We regard the organs of legislative authority as representatives of the people, accountable to them, and constituted for the purpose of expressing their will. We acknowledge that this general or public will must prevail, whether in the ordinary legislative enactments, or in the construction and alteration of the fundamental laws. As unanimity in the operations of such a Government, is in the nature of things, impracticable, the general will is to be expressed by the voice of the majority. This, as the gentleman from Frederick (Mr. Cooke) has correctly stated, is a rule founded upon necessity ; for otherwise, the public will would be nugatory, or would be expressed by the voice of the minority, the absurdity of which is manifest.

None of these principles have, as yet, been controverted in this debate. It has not even been denied, that the will of the majority ought to prevail ; the only controversy is in regard to the application of the rule ; some gentlemen contending that a majority does not mean, necessarily, a majority of numbers alone. On this point, it is only necessary that reference should be had to the language employed in our Bill of Rights, which asserts that a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish the Government. It is impossible that any one can doubt the majority here spoken of, is a majority of numbers, and not a majority of interests, or of interests and numbers combined. It is true that this clause in the Bill of Rights was not intended as a declaration, that in all cases whatever, in which a conflict of opinions may occur, the question in controversy is to be decided by a majority of numbers ; and the gentleman from Orange (Mr. Barbour) has stated various examples in which the rule is not applicable. The principle declared, is obviously in reference only to the sovereign right of the people, to establish or change the fundamental law ; and it cannot be doubted, that the majority of the people may, if they so determine, give an ascendancy in the Government to the minority. But is it reasonable that they should do so ? and would not such a transfer of power be a gross violation of the duty which they owe to themselves ? The majority have the unquestioned right to change the very foundations of Government, and distribute political power according to their own discretion ; and yet they are asked to subject themselves and their posterity, by their own voluntary act, to the control of the minority. Should they do so, they will shew themselves well worthy of becoming " hewers of wood and drawers of water." I would ask, Sir, if there is any one here who would venture to propose, that when the Constitution, which we are engaged in preparing, shall be submitted to the people for their approval or rejection, the question shall not be decided by the majority of qualified voters ? And should there be reserved to the people, as undoubtedly their right, a veto upon the enactments of the Legislature, would they not, in the exercise of that direct power, decide according to numbers ? The purpose of representation, is the delegation of power to agents, which the people cannot, with convenience, immediately exercise themselves, and no inequality ought to prevail, in regard to the delegated authority, which would not be admitted amongst those from whom it is derived, if retained by them in their own hands.

I have thus endeavored, by referring to well established principles, to shew that no inequality ought to exist in the exercise of the elective franchise. It is true that the right of suffrage itself, may, and ought to be limited. All those are to be excluded, who cannot be expected to exercise it discreetly ; that is to say, in such manner as will promote the safety and happiness of themselves and the rest of the community. It is upon this principle, that various classes, embracing many individuals, are excluded ; of which, obvious and familiar examples have been stated in the course of this debate. It is upon this principle alone, that any freehold or other property qualification can be required from the electors. The qualifications, of whatever nature, are the subjects of a sound and wholesome discretion, and ought to be fairly and impartially adjusted, with a view only to the public good, and not for the purpose of elevating

or depressing any portions of society. But when once established, all those entitled to the right of suffrage ought to be admitted upon terms of perfect equality. We cannot with propriety, distinguish amongst individuals, or masses of individuals. There is no doubt a wide difference between the merits of individuals, intrinsic or adventitious. Moral integrity, talents, learning, reputable connections, the fruits of industry, acquired or inherited, always give the possessor an influence over the opinions and conduct of others; but those advantages are sufficient in themselves and require no artificial distinctions. Neither justice nor good policy requires that authority should keep pace with influence, and be in like manner unequally distributed. If the rule of equality for which I contend, be departed from, in order to distribute political power, in any degree, according to wealth, then I agree with the gentleman from Norfolk (Mr. Taylor) that the Government must, to that extent, be regarded as a monied aristocracy.

Having thus presented some of the considerations which, in my opinion, justify the resolution reported by the Legislative Committee, I shall now submit a few remarks upon the basis of representation proposed by the amendment. So far as taxation is a constituent, it is a scheme of property representation; and one of the arguments urged by its advocates is, that property ought to be represented, inasmuch as it is one of the great objects of Government. I beg, Sir, that the purposes of Government may not be confounded with the principles upon which it is to be organized. The protection of the people in the enjoyment of their property is doubtless an important duty of Government. But the same duty exists in relation to all the innocent and legitimate enjoyments of which they are capable. Those enjoyments are not, however, the proper subjects of representation. In a representative democracy, which is founded upon the supposed intelligence and virtue of the people, the purposes of Government are to be effected by a representation of the people themselves; and we have been taught to believe, that under such a system, none of the important interests of society will be prostrated or neglected. It can throw no light upon this subject to distinguish between personal rights and the rights to property; they are all equally entitled to the protection of Government; their relative importance cannot be graduated; nor is there any scale by which we can determine how much relative political power ought to be enjoyed by a citizen in order to ensure to him protection.

The advocates of the proposed amendment avow, that it is intended to operate upon the relative political power of different portions of the Commonwealth; and it is obvious that the only security which it can afford to property is by protecting it against the partial and unjust legislation, which may arise out of conflicting sectional interests. It can have no effect in securing proprietors throughout the State against the assaults of the indigent. Power would be unequally apportioned amongst the electoral districts, but in each district every elector would be entitled to an equal vote. If, therefore, a combination should be formed amongst the indigent against the affluent, property would find no protection in the basis of representation proposed by the amendment. If gentlemen are correct in the supposition that property ought to be represented in order to afford it protection, they ought not to stop short of their principle, and provide only a partial safe-guard; but should propose giving political power to each proprietor in proportion to the value of his property or the amount of his taxes. Now, I ask, Sir, what would be thought of a proposition that one elector should have twice, or thrice, or ten times as many votes as another, in consideration of his owning property to a greater extent; and yet the principle is the same, whether it be applied to individuals or masses of individuals.

Several gentlemen have urged upon us, that taxation ought to be regarded in the apportionment of representation, because it furnishes the means by which Government is supported; and we have been told, that those who pay the taxes ought to lay the taxes. If by this assertion is meant, that all who pay taxes ought to be admitted to the right of suffrage, it may be true as a general proposition, and will receive the consideration of this Committee when another resolution of the Legislative Committee shall occupy our attention. If the idea intended to be expressed is, that none but those who pay the taxes ought to have a voice in laying them, then the rule would amount to nothing more than an exclusive property qualification. But if we are called upon to believe that political power ought to be unequally distributed amongst the qualified voters, from a regard to the sums of money which they respectively contribute to the support of Government, it remains to be proved why contributions of that character confer a better claim to political power than those of any other description. There is no good reason why the aid which a citizen furnishes in the support of Government, in the form of taxes, should be placed on higher ground than that which he yields in personal services. He who devotes the energies of his body and mind to the welfare of his country, labours to promote her best interests, or defends her rights upon the battle field, may surely claim the merit of having contributed to the support of Government. He is not entitled to political power merely in consideration of such services, but his right is not inferior to that of him whose aid is furnished from his

purse. There is not, as some advocates of the amendment seem to suppose, any peculiar relation between taxation on the one hand, and representation on the other, as is evident from the principles which govern their respective application. All are bound to contribute to the support of Government according to their means; all are entitled to the right of suffrage who have sufficient evidence of permanent common interest in, and attachment to, the community.

I am at a loss to perceive, Sir, how this subject can be elucidated, by the reference which gentlemen have made to the controversy with Great Britain, which resulted in our Independence. The British Parliament asserted the right of taxing us without our consent, although we were in no wise represented in that body; our representatives being here in our Colonial Legislatures. We resisted that despotic enterprize of a foreign Government, as we would have resisted any other invasion of our civil liberties, and engaged in the perilous and unequal conflict, not to obtain representation in Parliament, which we would not have been willing to accept, whether according to taxation or numbers, but because we would not submit to laws affecting our rights, to which we had not consented, either by ourselves or our representatives.

As this amendment is justified, in the opinion of its advocates, by the conflicting sectional interests supposed to exist in Virginia, in consequence of which the greater wealth of the minority might, without some such security, fall a sacrifice to the rapacity of the majority, I would ask gentlemen to reflect whether there is in point of fact, any permanent contrariety of interests of that alarming character. We are forming a Constitution which is to last for ages, and we should be careful not to mistake temporary and fluctuating varieties of interests, for those of a permanent and irreconcilable nature; and the changes in the relative wealth and population of different parts of the State, which have already occurred, and are still in progress, ought to be sufficient to remove all fears on this subject.

The only effect of the proposed amendment would be, to give permanency to any hostile sectional feelings which may now exist in this Commonwealth, and by exasperating those feelings, perhaps bring about that very insecurity of property which it is the object of its advocates to guard against. Representation in any degree, according to taxation, would not prevent schemes of internal improvement; by which, portions of the State may be made to aid in defraying the expenses of improvements in which they might not consider themselves immediately interested. If enlarged views of justice and sound policy should not satisfy the dominant party, however constituted, that the interests of the whole State will be promoted by useful internal improvements, wherever required, you may rest assured that the same result will be produced by combinations of various sectional interests. And we are not to expect that the east and the west will be always arrayed against each other upon such questions. The improvement of James River may, for example, be united with a project to connect it with the western waters; and in like manner a concert may be brought about between those interested in the navigation of the Potomac, and that of the Shenandoah.

All the arguments which have been urged to prove that Virginia is divided by hostile and irreconcilable sectional interests, only tend to establish that she ought not to continue united under the same Government, a conclusion abhorrent to the feelings of every patriot, and however ingenious and eloquent gentlemen may speculate upon the subject, not justified by any facts which have occurred in the whole course of our history. And after all that has been said to destroy our confidence in the justice of the majority, it is the only rational security which we can have for the peace, and happiness, and prosperity of the community. Our Republican Institutions rest for their support upon the virtue and intelligence of the people; and if they should not be sufficient to ensure a faithful and wise administration of the Government, the best hopes of human liberty and happiness which we have cherished must be disappointed, and we shall be compelled to abandon the scheme of self-government, and yield up the many to the protection of the few.

Mr. Baldwin concluded, by apologizing for the imperfect manner in which he feared he had discharged the duty he had undertaken, and for the omission of several views of the subject, which he had intended submitting to the consideration of the Committee.

Mr. Cooke of Frederick, availed himself of the pause which ensued, after the close of the above speech, to correct a misapprehension into which Mr. Upshur had fallen, in supposing him to have admitted, that in the whole period, during which the existing Constitution had been in operation, no instances of misrule had ever occurred in any department of the Government; he had gone no farther than to admit, that while the Gentlemen in the eastern part of the State, having the majority in the Legislature, had it thereby in their power to lay oppressive taxes on the cattle of the west, they had never exercised their power in that respect. As to instances of misrule, he had not said any thing, as he would gladly avow such a question. He went into a farther

correction of the same gentleman, in relation to what Mr. Cooke had said, as to the balance between the population on the two sides of the Blue Ridge, and the relative number of slaves in the lower country, and in the Valley, and he made a statistical calculation to shew, that the fears entertained by the slave-holding part of the State were groundless.

Mr. Upshur replied, and regretted that the gentleman had thought it necessary to withdraw any part of a compliment, which, as coming from him, was highly appreciated by gentlemen from the east of the State. Still the argument remained the same; for, if when they had the power, they had not oppressed the west by taxation, he was at a loss to conceive, in what other way they were under any temptation to oppress them. Mr. Upshur still insisted on the ground he had before taken, as to the balance of slave population; and denied that any counties were to be reckoned to the slave-holding interest, but these in which that sort of population formed the preponderating interest.

Mr. Leigh of Chesterfield, asked whether it would be trespassing too far on the gentleman from Frederick (Mr. Cooke) if he asked him to state some of the prominent acts of misrule, which had taken place in the Legislature of Virginia, during the time the power of the majority in that body, had been in the hands of gentlemen residing in the eastern portion of the State? It had been a part of the fortune of his own very laborious life, to examine almost every act of that Legislature, since the Revolution. On the subject of misrule, he confessed himself a beggar for information, hungry and destitute. He did not ask the gentleman to go into particulars, but merely to state some of the prominent cases. Mr. Leigh would not say, that during that time no impolitic measures had been adopted, nor would he say the Government had always pursued the wisest and the best course; but, he wished to have pointed out to him any very impolitic measure, justly chargeable upon the structure of the existing Constitution, and to which the people of the west had not been as much parties as the people of the east; any wrong done either to individuals, or to classes of the community, springing out of the principles of the Constitution.

Mr. Cooke replied, that he had not asserted the existence of misrule, and, therefore, he was not called upon to prove what he had not asserted. Yet he would not admit, that he might not truly have made such an assertion. To make his meaning more distinct, he would now say that he did assert the existence of such misrule. Yet he should reserve to himself the right of taking what course he chose upon that floor; nor could he consent to have such course chalked out, and dictated to him by the member from Chesterfield. He said he might, perhaps, give at some other time the reasons on which his assertion rested; but at present there were many gentlemen who wished to speak to the question; and he did not choose to have the time of the Convention taken up by a discussion thus forced upon him by the gentleman from Chesterfield.

Mr. Leigh rejoined: he thought there had been nothing either unparliamentary or indecent in the request he had preferred to the gentleman from Frederick. The gentleman would certainly wait his own good time. But, in the mean while, he begged leave to join issue with him, and to pledge himself to meet the charge, come it on what ground it might: the history of the Legislature of the State would repel it.

On motion of Mr. Powell of Frederick, the Committee then rose, and thereupon the House adjourned.

FRIDAY, OCTOBER 30, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Sykes, of the Methodist Church.

The Convention resolved itself into a Committee of the Whole, Mr. Stanard in the Chair.

Mr. POWELL rose to address the Committee, in opposition to Mr. Green's amendment, and spoke in nearly the following terms:

Mr. Chairman: At no period, upon no occasion of my life, have I felt so much embarrassment as I do at this moment. I fear I have neither physical nor moral strength to sustain the weight. It is not wonderful that I should be embarrassed, when I look through this assembly, containing the assembled wisdom of the State; when I see before me, men grown grey in the pursuit of political service, and who have spent their lives in the application of their science, to promote the happiness and prosperity of their fellow men: men, who will hereafter be consecrated for their profound wisdom and tried patriotism. It would ill become so humble an individual to be otherwise than embarrassed. Mr. Chairman, I have nothing to offer to this Committee, but a plain, unvarnished statement of the grounds and arguments, which have brought

me to my conclusions. I cannot invoke the rich stores of fancy or call the decorations of eloquence to my aid.

We have, Mr. Chairinan, been deputed here, and clothed with ample powers by the people of Virginia, to form for them a compact of Government for the protection of their lives, their liberty, and for the security of their property. In the discharge of this duty, I know of but one moral or divine law which we are bound to respect and obey: this is, that we shall observe the immutable principles of justice in framing the instrument. There are certain political maxims, hallowed by time and sanctioned by the wisdom of the sages and patriots of former days, and embodied in our Bill of Rights, to which I shall have occasion to refer hereafter, that certainly have no binding or obligatory force upon us, either natural or divine, but which certainly are entitled to great respect and influence, where they are applicable. Our duty, as I have said, is to form a compact of Government; in doing this, certainly, every member has an unquestioned right to offer his propositions, and insist on their admission into the compact. In doing so, the member is the only proper judge of the justice and expediency of his proposition, and is not bound to yield his own opinion to the influence of any political maxim; except where such maxim has intrinsic worth to recommend it. We have, then, a moral rule to govern us, which, we are not at liberty to violate, and we have political maxims to guide us, so far as we regard these maxims as applicable to existing circumstances. There are also motives and rules of action, personal to ourselves, that ought to be adverted to. We were not sent here, to gain in this compact, to seek to obtain advantages for those we represent, local or sectional advantages; for myself, I would have indignantly rejected the honorable trust conferred upon me, if it had been expected of me to struggle for local interests, at the sacrifices of the interests of the whole community. I regard myself here, as the representative, as much of the one as of the other sections of the Commonwealth. I regard it as my duty to look to the interests of the whole community, and to provide fundamental laws for the community at large.

With these preliminary views, I shall proceed to the consideration of the questions now before the Committee. It will be conceded, I presume, by every member of the Committee, that in the formation of a compact of Government, the great and leading object ought to be, to conform the Government to the character of the people over whom it is to operate. It will also be conceded, that a Representative Republic, founded upon elementary principles, essentially belonging to such a form of Government, is the best and happiest system for obtaining the end of all Government that can be devised, when the people have the essential qualities to suit them to such a form of Government. Those essential qualities are virtue and intelligence in the people. If they have those qualities, justice demands that they should receive this highest and best gift of Divine Providence, at the hands of those to whom is confided the power of framing their Government. If, on the contrary, they are deficient in those great essentials, such a Government would be to them a curse instead of a blessing. All history and experience prove the truth of this proposition. No wise politician would for a moment contend, that Turkey or Russia could live under such a form of Government. Visionary and dreaming politicians made the experiment in France: the result was a scene of carnage and horror, at which the mind revolts. But, in the same ratio as it would be unjust and impolitic in these countries, to attempt to establish a Republican Government, it would be unjust to refuse a Government of that description, to those who have those essential pillars, on which alone it can rest.

Our first duty, therefore, is to look to the character of the people of Virginia, for whom it is our duty to form a Constitution. If we find them virtuous and intelligent, it would be unpardonable in us, not to frame for them a Constitution, founded upon the pure and essential elements of Republicanism. It would be without excuse, if, in departing from those principles, we infused into the instrument, oligarchical, aristocratical, and monarchical principles, abridging, in any degree, their power of self-government. What, then, is the character of the people of Virginia? Have they virtue; have they intelligence, fitting them for such a system of Government? If they have not, it may be safely affirmed, that there is not, upon the face of the globe, a people of whom we have knowledge, that possesses these requisites; and we have only to deplore the verification of the predictions of all the enemies of civil liberty, who denounce the Republics in this country, as an idle and visionary experiment; and the friends of liberal principles, may sit down and lament over the prostration of their best and fairest hopes. But I confidently maintain, that the people of Virginia, is a community, who *love* virtue and intelligence. To sustain this proposition, I appeal to every member of this Convention, and ask him to look at the people with whom he lives in the district he himself represents, and to say whether they are not a virtuous, an honest, and an intelligent people? For myself, I could say, that the people of the district with whom I live, possess this character. No one will deny that the people of Virginia, were a virtuous and magnanimous people in 1776; that they gave the most striking and conclusive evidence of the most sterling virtue.

With a vindictive and ruthless enemy at their very doors ; with every thing to appal and to alarm ; in truth, with halters round their necks ; the alternative was presented to them, of abandoning their virtue, their principles, and their country, and thereby securing their own safety, or nobly traversing the dangers that encompass them : are the people of Virginia the degenerate sons of such fathers ? I think not. A similar occasion would produce similar evidences of virtue at the present day. The demoralizing principle, has not here had the inviting channels which have been opened to it in some other States of the Union. We have no large cities in Virginia, to present an inviting refuge for the vicious, the profligate, and the convicts of foreign countries, and in that way, to introduce them into the heart of the community, spreading their baneful influence in all directions.

But a conclusive evidence of the virtue of the people of Virginia is to be found in the body here assembled. I look around me, and of what materials do I find it composed ? Does it not include men most distinguished for their wisdom and for their virtue, their patriotism, and public services ? Were not these the qualifications which recommended them to the people of Virginia ? Would the people, if themselves vicious, or demoralized, have selected them for such recommendations ? What, I ask, is this ? Does the report of the Legislative Committee, which we are now considering, recommend an essential, elementary principle, as the basis of a pure Republican Government, suited to a virtuous and enlightened people ? If it does, and the principles which I have attempted to maintain, be correct ; justice, wisdom, and policy demand that that report should receive our sanction. The principle there recommended, is, that representation in the Legislative Department of Government, should be based upon white population, exclusively. I have said, that there were great political maxims emanating from the wisest and most patriotic statesmen, and sanctioned by all the elementary writers upon the subject of Government ; acted upon too, and approved by the people of this Commonwealth for fifty-four years, and embodied in our Bill of Rights ; and that we ought to regard them, not as binding authority, but as lights to guide us to correct conclusions. One of these maxims is found in the second section of that instrument, which, among others, is declared, in the preamble of that section, to pertain to the people of this Commonwealth and their posterity, as the basis and foundation of Government. That maxim is, "that all power is vested in, and consequently derived from, the people ; that magistrates are their trustees and servants, and at all times amenable to them." To see the application of this maxim, we must first ascertain in what sense the word "people" is there used. It is unquestionably intended to embrace all those within the pale of the community : in other words, all those who are participants in the enjoyment of political power. It follows, therefore, when the community is ascertained, that all political power is vested in that community. By the third article in the Bill of Rights it is provided that a majority hath an indubitable, unalienable, and infeasible right, to reform, alter or abolish the fundamental laws as shall be judged, &c.

Thus it is perceived that, by the Bill of Rights, and without the Bill of Rights it would be equally true and undeniable, two great principles of Government are established.

1st. That all power is vested in the people.

2nd. That a majority of the people must control the minority, and regulate the exercise of that power.

Apply these two principles to the resolution of the Committee, and they sustain the proposition therein contained.

The truth of these two propositions must be denied, or the resolution must be sanctioned : does this require argument to prove it ? The argument is brief. If all power is "vested in the people, and a majority is" to govern, in the exercise of that power, it follows of course, that such majority can only be ascertained by a general vote of the people, or by their agents representing equal portions of the people.

I have thus, according to my intention, endeavored to shew :

1. That Government must be conformed to the characters of the people.

2. That Republican Government is the happiest form of Government, that human wisdom can divine, for a virtuous and intelligent people.

3. That the people of Virginia, have the necessary virtue and intelligence.

4. That the resolution of the Legislative Committee, recommends a principle essentially and necessarily forming an element, of a pure Republican Government.

I will now, Mr. Chairman, proceed to the consideration of the amendment proposed by the gentleman from Culpeper. He proposes to strike out the basis of white population exclusively, as recommended by the Committee, and to insert a totally different basis ; a basis to be composed of population and taxation combined :—As to the object of this proposition of amendment, there can be but one opinion ; it is intended, distinctly, to give representation (to a certain extent) to wealth, and not to numbers. What is the avowed operation and effect of the amendment, as admitted by its friends and advocates ? It will be to give representation to slaves, and political power to their masters in the Legislative Department of the Government ; and this, not because they

are rational beings, having free will, and the power of exercising such free will, but as *property* exclusively in the hands of their owners, by reason whereof, they are to have and exercise political power. To illustrate: If an individual has one hundred slaves, upon which he pays taxes, he is to have political power in proportion to his number of slaves. This doctrine is new in the political institutions of this State: it is moreover, not only a departure from what has hitherto been regarded as republican, but is in direct conflict with the political maxims, by which the statesmen and patriots of Virginia have heretofore been guided and governed. Let us look, for a moment, to some of the most leading and fundamental of these maxims: In the Bill of Rights it is asserted, that all power is derived from the people, and of right belongs to them. The proposed amendment affirms, that all power is not derived from the people, and vested in them, but that a portion of political power belongs to, and is vested in, *property*, and that not *property* in general, according to the argument, but in a particular species of property. There is another political maxim found in the same instrument, which asserts, that the majority of the people have an indubitable, unalienable, and indefeasible right, to reform, alter or abolish their fundamental laws. The amendment affirms, that this right does not belong to a majority, but that this great and absorbing right, belongs to a *minority* of the *people* and majority of *wealth*: both these propositions cannot be true. The one or the other must be false. Are gentlemen prepared to pronounce these maxims false? They certainly have high, and I would almost venture to say, controlling sanction, when applied to people capable of self-government: they emanated from the wisest and purest statesmen, in the best of times. They are hallowed by time and experience, and are interwoven with the habits and affections of the people of Virginia. Will the Committee at this stage of my argument, indulge me in a simple and practical illustration of the truth of these political maxims. I beg leave to use my illustration, not only to shew, to some extent, the reasons upon which these truths are founded; but also, as an answer to an argument of the gentleman from Orange, in which he insists upon the *quid pro quo*, in the compact we are engaged in making.

I will suppose that a community of fifty individuals have assembled together for the purpose of forming for themselves a system of Government. Of these individuals, forty are worth 100 dollars each: the residue ten, worth 2000 dollars each. They agree as to the object of the compact. It is to protect their lives, and their liberty, and to secure their property. The next object is the details of this compact. I will take the *joint-stock* principle of the gentleman from Northampton. Ten wealthy individuals bring into contribution, their lives, their liberties, and their two thousand dollars each. The poorer and most numerous class bring also their lives, their liberties, and their one hundred dollars each, which constitutes their all, into the joint-stock. The rich say, "we have two thousand dollars each: you have but one hundred dollars each. We have, consequently, twenty times as much property to protect by the provisions of this compact as you have. We, therefore, insist upon having, in all matters about which we are to legislate, ten votes for your one. This provision is necessary for the protection of our property, against your cupidity. Otherwise, having the majority of numbers, you might legislate our two thousand dollars out of our pockets into yours." What would be the obvious answer to such a demand? "It is true you have the most property; but our lives and our liberties are as dear to us, as your lives and your liberties can be to you. As to property, we bring into common-stock our all, you do no more. Our all is as dear to us, though not so great, as yours can possibly be to you. The compact can be only durable, as founded upon the mutual confidence of the contracting parties. Besides, if *you* shall have, by virtue of your property, the political power which you claim, you may exercise that power upon our lives and liberties, as well as upon our property. If, by virtue of our numbers, we are to be feared, as to matters of property, why may we not equally fear for our liberties, if we give to *you*, who are the *minority*, the power to govern us; especially as you have the wealth, which is power in itself?" At this moment, when the Convention is about to be broken up upon this matter, as to the distribution of power, a neighboring horde of marauders and plunderers are seen hovering round our supposed community, with the evident intent of conquering and plundering them. What would the wealthy minority think and say? "We have not strength to defend ourselves without your aid. Not only our property, but our lives and liberties will fall a prey to our enemies. It is our wealth especially which has allured them; we shall be the peculiar objects of their vengeance. We close with your terms: with your aid, our defence and protection is certain." The invading foe is repelled, at the risk, perhaps at the expense, of the blood of the majority. I would ask the gentleman from Orange, whether there would not be here a *quid pro quo*. Sir, I hope the day is far distant, when this Commonwealth will be exposed to war or invasion; but it is certainly wise to look forward and to make provision for such an event. When that day shall arrive, depend upon it, the wealthy few will find their remuneration for the loss of political power, which they now deprecate, in the dauntless bravery and ardent patriotism of

the free white population of Virginia, in defending them from the only danger they have a right to apprehend to their property.

I have always thought, Mr. Chairman, that in a republican form of Government, so far from giving to wealth political power, the liberty of the citizen required that safe-guards should be provided, to prevent wealth from drawing to itself too great a portion of power. More than one successful conquerer has said, "give me money, and I will conquer the world."

But it is said, that Government is intended to protect property: this is certainly true. But where is this protection to be found? Is it to be found in parchment stipulations in the compact of Government? By giving to property, preponderating political power? By declaring that the minority of the people shall govern the majority, because of their wealth? By placing wealth in a hostile attitude to physical strength? Certainly not. This would truly be "a paper guarantee," which the eloquent gentleman described and rejected the other day, as visionary and delusive; and all his arguments, as to its inefficacy and futility, apply here with full force.

Sir, the only effectual guarantee, against the abuse of power in a republic, is to be found, and to be found only, in the *virtue and intelligence of the people*, in whom all power rests. While virtuous and intelligent, they will do no act of injustice or rapine. And when they become vicious, and fit for violence and spoil, it is in vain to attempt to restrain them by compact stipulations. When vice prevails, the republican form of Government cannot exist: it has, in itself, the elements of its dissolution. Some other form of Government must be resorted to: under which, indeed, the many may be restrained from plundering the few, but where the many will be plundered by the few.

Mr. Chairman, one leading objection to the amendment, which operates powerfully on my mind, is, that we have been deputed here, under a hope, entertained by the majority of the people of Virginia, that the very principle recommended by the Committee, may be incorporated in the Constitution. If this hope is disappointed, you will have a lasting cause of discontent. Sir, they will not be satisfied. The Constitution you offer them will be rejected. I do not, indeed, believe, nay, I am confident, that the people of Virginia would not, in such an event, so far as I know them, rise in their majesty, and demand the object of their wishes. I do not believe that there would be any disorderly or revolutionary manifestations of their displeasure. God forbid there should.

If I am mistaken, I pledge myself with my best powers, to prevent or delay any such feelings. But, I am satisfied, they would unceasingly, year after year, crowd the table of this Hall with their memorials and petitions, complaining of their wrongs and demanding redress, until the call of another Convention would be extorted, under a state of fearful excitement. Every gentleman would deprecate such a result.

Ought we, then, to infuse into the compact, any principle calculated to lead to such consequences, unless demanded by considerations in themselves irresistible.

Let us, then, attentively examine the grounds on which the principle is supported.

It is said, that the slave-holding portion of the community fear, that unless this amendment is adopted, their rights and interests in their slaves will be endangered, or abused; that the political power of the State, will, in the hands of the non-slave-holding portion of the community, be used to their oppression. These fears are either well, or ill founded. I think I have shewn, by the aid of the gentleman from Northampton, that if those fears are well founded, that no security is to be found in any paper stipulation on the subject, or by the adoption of the amendment: because these fears presuppose that the people are vicious, corrupt, and dishonest: and if such be the fact, no possible security can be formed, recognizing the right of self-government in the people. But, Sir, depend upon it, there is no ground of such fears, from any calculations I have been able to make. But, is there not a perfect security to the rights of the slave-holders, if it be a fact, that they will still retain the political power of the State, even upon the basis recommended by the Committee? My friend and colleague in his arguments to this Committee, proved, beyond question, by statistical calculations and facts, that the adoption of the resolution by the Committee, would *not* transfer the controlling political power to the non-slave-holding portion of the community; but that a majority in the Legislative Department of the Government, would still be left to the slave-holders. If this be true, surely, no gentleman would apprehend, for a moment, that those holding the power, would exercise it to the sacrifice of *their own* interests. I pray the Committee, to look for a moment, to their statistical tables, and they will find the most conclusive evidence, that the majority of the Legislative body, if the principle of the white basis be adopted, would still remain in the slave-holding portion of the community. Keeping out of view the slave-holding interest, which exists to some extent, in the country beyond the Alleghany, and assuming the eastern base of the Blue Ridge, as the western boundary of the slave-holding population, there it will be found the slave-holding interest predominates. If to this you add the

slave-holding interest in the Valley, you give an overwhelming majority to the slaveholders. The fears of gentlemen must vanish before facts so conclusive. But, Mr. Chairman, we ask the high-minded honorable gentlemen of the east, to remember the charitable rule of judging others by ourselves. It is with unfeigned pleasure, that I bear testimony to the fact, that the slave-holding country of the east, have never done us injustice on the subject of taxation, though it has always been in their power to do so. They have most liberally contributed to the revenue of the State, by taxation on their slaves. Why, then, fear to trust the people of the west, if controlling political power, should devolve upon them? Have we less virtue and honesty? Are we made of different materials? We have not received injustice at *your* hands; why, then, should you apprehend it at *ours*?

It is said, that there is a diversity of interests in the different parts of the State, which must be harmonized by compromise. It is hardly possible to conceive a community in which there is *not* a diversity of interests.

Sir, diversity of interests is always to be protected by wise legislation; and there is no fear that every interest will not be fully and fairly represented in our Legislative body. If there be warring, and conflicting interests, the question would then be, could *any* Constitutional stipulations or provisions reconcile such interests? But it remains to be proved, that there *are* warring and conflicting interests within this Commonwealth. I do not admit the fact.

The gentleman from Northampton has asked us, whether we will consent to take all the political power, and bear all the pecuniary burdens? To this inquiry I indignantly answer no. The gentleman would reject such a proposal himself. We will neither *buy* nor *sell* political power; we regard it as the unalienable property of the people, which they have not a right to barter away or divest themselves of, either for themselves, or their posterity.

The gentleman from Orange, has reprobated the idea of giving political power to property alone. I concur with him in his reprobation. But has the gentleman reflected, how far the amendment he advocates, in effect, leads to the same result? He must admit, that the minority of the people ought not to, and cannot, govern the majority; but he contends, that property connected with that minority, ought to govern. What, then, is it that constitutes this right to govern, upon his hypothesis? It is certainly property.

Mr. Chairman, I have done. I have presented my plain views, in my plain way. I am thankful to the Committee for their polite attention, whether it proceeded from courtesy to myself, or from respect to any thing that I have said.

Mr. MORRIS of Hanover, then rose, and addressed the Committee substantially as follows:

After the able discussion this question has undergone, I cannot flatter myself with the hope of throwing upon it much additional light. But, as my constituents feel themselves very deeply interested in its decision, I hope to be indulged, while I assign the reasons which will govern my vote upon it. I promise, in so doing, not to detain the Committee long.

Mr. Chairman, it seems to me, that the question, which the gentleman from Frederick (Mr. Powell) has just been discussing, is not the question now before us for consideration. The question we have to decide, is, whether representation in the Legislative branch of our Government, shall be based upon numbers only, or on a combined ratio of population and taxation: from some of the remarks which have fallen from the gentleman from Frederick, he seems to have considered the question to be whether it should be based on *all who enjoy the elective franchise*, or on *all the fighting men in the community*. These are not the matters which we are now considering. When they shall be presented to us, if they ever shall be presented, the proper time will arrive to attempt an answer to what he has advanced. The question now before us is a very short one. Shall representation be based on numbers only? Or upon population and taxation combined? The question is short, but in its decision is involved much of the happiness or misery of this our ancient Commonwealth. Before I examine it more minutely, let me be allowed to make a remark or two, in reply to some of the observations of gentlemen on the other side of this question.

As the end of all good Government is the protection of property as well as of persons, it is not enough for those gentlemen to prove that their personal rights will be endangered unless representation shall be based upon numbers alone. If they had proved this, which I humbly conceive they have not, still, if we are not assured that our rights of property will be secure under such an arrangement, their observations fall short of the mark; they do not cover the whole ground. Even, if it be true, that they will not be protected in their personal rights, without the introduction of the new clause in the Constitution, yet, if that clause, in its practical effect, goes to lay prostrate our property at their feet, they have not proved to us that the article ought to be inserted.

Their argument might, indeed, shew us, that it will be right to propose to the people of Virginia *two* Constitutions instead of one; or else that some middle principle must be resorted to, which shall protect both persons and property; but if no mode can be found, of giving protection to both; if the incongruity between the two interests really be so great, that either one or the other must be sacrificed, I agree that the Convention should provide two different Constitutions. I earnestly hope, however, that no such necessity will be found to exist. I hope it will appear, that we may, at the same time, be able to secure to the west the enjoyment of their personal rights; and to the east, the safe possession of their property. I hope this, as a Virginian: for I feel my pride interested in keeping the lines of the State as they exist at present. Sorry should I be, to run a *new line* across the whole of our ancient territory; nor can I ever agree to such a measure, unless it shall be found necessary for the protection of the personal rights of one portion of the State, and the property of the other. I deprecate the existence of such a necessity. Whether gentlemen on the other side of the question, by the uncompromising perseverance with which they insist on carrying all the points they have in view, shall bring us to this necessity, I will not even allow myself to consider.

Let us see, Sir, whether there be any thing in representative Government, which so imperiously requires the insertion of this clause; whether it be indispensable for the preservation of a Republican Government, that representation in the Legislative Department shall be bottomed upon numbers only. If this principle be true, and our conflicting interests be, indeed, so irreconcilable, as some gentlemen seem to suppose, I know not, I confess, to what consequences it may lead. But whatever may be the basis, upon which representation is made to rest, I am satisfied that we must have a Republican Government. Our people are not only capable of enjoying that form of Government, and desire to have it, but we cannot make for them any other. Because there is another Government, of which we are also members, which has guaranteed to every State within its operation, a republican form.

But is it necessary that such a Government shall be based upon numbers only? When this debate commenced, it seemed that the principal source of argument was drawn from an inherent, independent, *a priori* right by which a numerical majority were entitled to govern: such a right was urged upon us with great earnestness at first; but since the able and convincing address of the gentleman from Northampton (Mr. Upshur) it appears to have been nearly, if not quite abandoned: and now the position we are left to combat, is, that this right of the majority is a *Conventional* right; that it exists by the agreement of our ancestors, and, therefore, ought to prevail. They derive the proof in support of this position from the Bill of Rights, and the general principles there laid down; and without paying the least regard to the specifications in the Constitution itself, they insist that the general positions in the Bill of Rights ought to be received as giving the universal rule for all free Governments. And really, Sir, were we to look at the language of that instrument and to look no further, there might seem to be much force in their argument. But it is an established rule of interpretation, that in order to get at the true meaning of any instrument, you are not to look at one of its parts only, separately and apart from the residue, but you are to take the whole record, and compare one part with another, and thus judge of the connected meaning of the whole. If that rule is pursued here, we shall be obliged to concede that the venerable men who were the authors, both of the Bill of Rights, and of the Constitution of the State, were in the former stating general principles only: they were laying the foundation, not building the superstructure; and when they did afterwards build it, built on no such interpretation of the first instrument as is now contended for. The reason gentlemen give for this, is a very strange one. They tell us that those illustrious men were too much hurried; the roar of hostile cannon was too audible, and their place of meeting was too near a ruthless enemy, to make their work what it would otherwise have been. They, therefore, could not carry out the principles they had laid down in the Bill of Rights, in the subsequent structure of the Constitution. It does not seem to have occurred to gentlemen, that if the near neighborhood of the enemy, and the roar of hostile cannon, and the dangers and alarms of a state of war, operated with so much force upon their minds, when they were drawing up the articles of the Constitution, the same circumstances may reasonably be supposed to have operated with equal force when they were drawing up the articles of the Bill of Rights. If they were in too great a hurry to *carry out* general principles in the Constitution, we may as well suppose they were in too great a hurry to *limit* those principles, when they laid them down in the Bill of Rights. If we must conclude, that they would have made the one of these instruments very different from what it is, if they had had more time for deliberation, why is it not as fair, to draw the same conclusion with respect to the other? But, Sir, is the fact so? was the Constitution drawn up in all this haste? Were those wise men, after laying the foundation of the house on one plan, obliged to build the house itself on another? I am sure the gentlemen believe what they have stated to be strictly true, but noth-

ing is more certain than that they are entirely mistaken. Sir, there are men now living, I was almost ready to say, there are men here present, who could inform this Committee, that every article in that Constitution was duly and diligently considered; aye, Sir, was debated, inch by inch. But I will not appeal to the living. I will appeal to the testimony of one of the most distinguished statesmen, whom this State or this country ever produced, but who is now no more. I could support by his testimony a multitude of facts on this subject, all going to verify the assertion I have made. I refer to Mr. Jefferson, who has left conclusive evidence to shew, that nothing like haste, nothing at all of the hurry supposed by gentlemen to have thrown the Constitution into its present form, had any existence. He says expressly, that that instrument was discussed, paragraph by paragraph, and disputed inch by inch: that the debate was protracted so as to produce weariness, and that in consequence of this weariness, a "projet" of his own, which he forwarded to a member of the Convention, was not submitted to its consideration, and, of course, not adopted, whilst its preamble was. I think, therefore, that those who are driven to contend, that while the Bill of Rights was drawn up with the utmost coolness and deliberation, the Constitution was hurried over amidst the roar of cannon, and from fear of the enemy, are mistaken in their facts: the evidence is all against them: and I am persuaded that they themselves, if they consult again the history of that time, will acknowledge that they have been in error. Let the consideration have its due weight, that both these instruments were drawn up by the same men, and at the same time; and that, in the exercise of the same wisdom, and with the same deliberation and care, they laid down, first, the principles, and then the form of a Government for Virginia. Apply, then, to these two valuable legacies of our forefathers, the principles of interpretation I have before mentioned. Do not take up one half the instrument, and say it means thus, and thus; but put both the parts together: They were both fashioned by the same hand: let all the strings sound, and then, if I mistake not, we shall be led to a different conclusion. If the framers of these two instruments understood themselves, and if on comparing the one with the other, it shall appear that the meaning of the Bill of Rights is not such as, taken alone, it might seem to bear; we must give effect to the provisions of the whole, so far as we can. For example, take the language of the Bill of Rights on the subject of the right of suffrage. Then take up the Constitution, and ask what it has enacted on the same subject? and see if there be any thing like contradiction between them. The Bill of Rights declares, that all persons "having sufficient evidence of permanent common interest with, and attachment to, the community," shall be entitled to vote. The question to be settled is, what is the true meaning of this declaration? Some gentlemen reply, that the fact of having been born within the State, furnishes all the evidence required; others tell us that a residence of two years is sufficient evidence; others require a residence of five years; and almost every gentleman has some qualification of his own. But do the framers of the Constitution and the Bill of Rights tell us any such thing? No, Sir; they say that the evidence they considered sufficient, is a FREEHOLD.

Do gentlemen tell me that here is a contradiction? Why, Sir, take the general principle in its abstract form; and you might argue from it till you bring us at length to universal suffrage. But take the naked principle, and view it in connection with the Constitution, and there you find, that freeholders, and freeholders only, were in the contemplation of those who laid down the principle. The one gives the interpretation of the other. The *general principle*, is in the Bill of Rights. The *limitation* is in the Constitution. The same remark is true, as applied to every other article. Let us apply the same mode of interpretation to the third article of the Bill of Rights.

The gentlemen say that all free white citizens in the State, are to be numbered, and that a majority of that number have the right to rescind, alter or new model the Constitution as they please; that they are to have the law-making power; in short, that they are to have all the power of the State: and we might have supposed that the framers of the Bill of Rights thought so too, had they not left on record a provision to the contrary. When they come to make the Constitution and ordain the law-making power, they *limit* the general principle laid down in the third article of the Bill of Rights, and confide that power, not to the *free white people*, but to the *freeholders in the several counties*.

Here, Sir, you find that they intended, not a majority of the free white male citizens merely, but a majority of citizens, capable of affording sufficient pledges that they would not abuse the authority entrusted to them. This is the majority to which they looked, and here is the limitation of the principle in the Bill of Rights. Let the gentlemen themselves say, if this comparison does not give the true interpretation.

It was said by the gentleman from Brooke, (Mr. Doddridge) that the Constitution has recognized no principle, by which slave-holders are to be protected.

[Here Mr. Doddridge explained. What he had said was, that the Constitution recognizes no such principle, as representation in virtue of property.]

Mr. Morris resumed. He had not misunderstood the gentleman; but would now undertake to shew that he was mistaken. It is true, said he, that the word "slave," is not mentioned either in the Bill of Rights or in the Constitution: neither do we ask that it should be inserted now. But when, in 1776, Virginia gave the control of her Government to *freeholders*, she granted it to *slave-holders*: nor could she have given to the latter a more effectual guarantee. The freeholder was himself a slaveholder. Was it necessary, expressly to say, that this was done for the protection of property? Sir, we infer it from the act. Virginia by her *act*, granted the power of the State, to men who held the very property, we desire to secure. And now let the gentleman from Brooke, give to the slave-holders the same power which was confided to them by the Constitution of '76, and so far as this subject is concerned, I am willing to adopt his proposition immediately.

It was said by my friend from Chesterfield, that this principle of basing representation upon numbers alone, is *new*: and I concur with him in that sentiment. The principle is not to be found in the existing Constitution: that instrument confides the power, not to a majority of free whites, but to a majority of freeholders. My friend did not say, that no such claims as are now advanced, had ever been made before. He was well aware of the abortive efforts, of which the gentleman from Brooke, has favored the Committee with an account: he knew perfectly well, that this doctrine had been asserted at Staunton twelve or fifteen years ago: but he thought, as I do also, that the memorial from Staunton, and the abortive efforts in the Legislature, had not affixed this new principle to the Constitution: a principle so different from those laid down by our forefathers in 1776, and which are calculated to protect, not only personal rights, but the rights of property also. The principle of a majority of mere numbers, was not only, not the basis of the existing Constitution, but it had been expressly and most solemnly declared, on various occasions, that it is unsafe to lay the basis of representation in any such principle. Such a declaration was the ground of the provision in relation to slaves, which is contained in the Federal Constitution; a provision, not which we *yielded*, but on which we ourselves *insisted*. Virginia, before she entered the confederacy, insisted that her representation in that confederacy should *not* be according to the numbers of her white population alone. And who, Sir, were the men that thus contended in the memorable Convention which framed the Federal Constitution? Some of those very men who framed our own State Constitution, and drew up the Bill of Rights. Yes, Sir, the very men, who laid down the abstract principles, from which gentlemen attempt to maintain the doctrine of a white basis exclusively, insisted that our Federal representation should be compounded of property as well as numbers. We did not acquiesce in the principle: We *demand*ed the principle. We demanded it as a protection for all this great southern country, which was then filled with slaves. Protection against whom? against enemies? dishonest and rapacious? and who would be tempted by interest to depredation and rapine? No, Sir, against men, just as kind-hearted, just as upright, just as honorable, just as generous, as are our brethren now: Against men who had shed their blood in our common struggle for independence; men, who had lain with us side by side in the camp, and stood with us, side by side in the battle, not ten years before. And why, Sir? Why did we demand such a pledge? Because we held it *necessary* to our protection. Not that we suspected their motives; not that we imputed to them wickedness; but because we knew then, as all men know now, that unless property is protected, it will be invaded. Virginia stood in relation to the Union at that day, as we now stand towards our brethren of the west. And will our brethren deny, what our sister States of the Union granted? I do not deny, that other considerations entered into the Federal Compact, besides the mere distribution of power. *Union* was a most important object; so important, that almost any thing was to be sacrificed for the sake of attaining it: yet, notwithstanding the importance of union, and the earnest, anxious desire for it, which was felt by Virginia, she, nevertheless, insisted upon this point as a *sine qua non*: Unless that was inserted in the Federal Constitution, Virginia would not take that Constitution.

Sir, we are called upon now, when placed in like circumstances, to give up the great principle for which they thus contended: and can it be said that we have fewer motives to insist upon it than they had? If such is the fact, let it be shewn: but if not, as it is not, what apology can we make to posterity? Let Virginia give up this principle and what will be said? Will it not be said, that the great southern State, has given up the great southern doctrine for which she contended in 1789? And, when the decision of that question shall be agitated in the Federal Government, how shall we stand? "Virginia the great southern State, has given up the point. It is vain for the rest of the south, to attempt to maintain it." But, Sir, there is a necessity for our maintaining it. You have been told by the gentleman from Northampton, that one eleventh part of our power in the Federal Government, is derived from this princi-

ple, and rests upon it. Cut it down, by the act of this Convention, and how will the south sustain itself in our National Councils? Mr. Chairman, we have *more* motives than our fathers had on this subject. We have given up to the Federal Government, the entire power of laying duties upon imposts. We have surrendered all our most valuable sources of revenue into their hands, and now we have few resources left but direct taxation upon our lands and slaves. At the time of the adoption of the Federal Constitution, the wise men, who framed that instrument, knew that all the resources of foreign commerce were to be in the hands of the Federal Government, and that the necessity of resorting to direct taxation, would seldom arise. If, then, our ancestors thought it necessary, at that day, to insist on the principle; if they rejected a representation based on numbers, and insisted on a guarantee for the protection of property, can our motives be less for a similar policy? Surely not. They are magnified ten-fold. Those who framed the General Government, were well aware of the vast resources which must be derived to it, from foreign commerce: but, we know, by sad experience, that a State Government can have no resources for wealth, but what she derives from direct taxation. If our fathers insisted on a guarantee against the mere *contingency*, that the General Government might, sometimes be obliged to resort to direct taxation, how much more ought we to be on our guard, whose direct taxes are annually and daily recurring?

But, Sir, we have given other evidence, that, in our judgment, the interpretation which the gentlemen would put upon the Bill of Rights, is not the true one. Not only did the very men, who drew up our Bill of Rights, themselves insist upon a compound basis of numbers and property; but look, Sir, how we ourselves have disposed of power, in the structure of the Senate of the United States. I know the case is not, in all points, parallel; but I refer to it, as going to shew, that, in the judgment of Virginia, mere numbers never do constitute a fit basis for representation, (unless, indeed, where the peculiar nature of the case is such, that they are, in themselves, an all-sufficient guarantee;) but, wherever great interests, either political or pecuniary, are about to be placed in jeopardy, a different principle is instantly resorted to. I say, then, that in the construction of the less numerous branch of the Federal Legislature, so far from admitting the principle of a mere majority of numbers having the right to rule, we agreed, that that principle should be, in a still greater degree, disregarded, than is proposed now by the amendment before us. We stipulated expressly, that all the States should enjoy, in that body, a strictly equal representation. The little States of Delaware, Rhode Island, and New-Jersey, are precisely on a footing with Virginia, New-York, and Pennsylvania. Sir, is there any thing here like an equality of numbers? The inequality is vast; it is infinite: far, far beyond any thing that is asked or thought of between us and our transmontaine brethren.

Why was such an article as this, inserted in the Federal Constitution? It was for the purpose of preserving the political sovereignty of the small States; and it was necessary to that end. Numbers did not, and could not prevail. If they had, the small States would have been in jeopardy every hour. We deliberately agreed to the arrangement. We ourselves said, that in point of representation in the Senate, Rhode Island and Delaware should be on the same footing with Virginia or New-York.

I know it may be urged, that this was not a compromise among individuals, but among sovereign States. Granted. But, are we not making a compromise, similar in character and principle? A compromise to preserve the rights of individuals, as dear to them, and as important to them, as political sovereignty can be to a State. Is it not for the preservation of that on which their families are to subsist? For the preservation of their property?

It is a compromise, on the same principle and for the same end; with this only difference, that property is in the place of political power.

Numbers then, were not in '76 or in '87, the principle by which the people of Virginia, were regulated, in conferring power either on her own State authorities, or those of the Federal Government.

Is there no great interest concerned in this question? Shall we be told that it is not a great interest which is to be protected? Aye, but it is said that interest is not in jeopardy. Sir, what is the present actual condition of this State? In what position do we stand? In this position: The slave population on this side the Blue Ridge, amounts to 390,000; the slave population beyond the Blue Ridge, amounts to 50,000. On this side the Ridge is raised more than three-fourths of the entire amount of taxes paid in the State. Beyond that Ridge is raised less than one-fourth of those taxes. Beyond that Ridge, lie 40 counties. Some of these of rich and fertile land, and one of the most beautiful limestone valleys on which the sun shines. And yet, Sir, this whole region of country, from the Blue Ridge to the Ohio river, is drawing every year from the public chest, for the administration of justice, and the purposes of representative Government, a sum greater than it brings into the general fisc. And now, Sir, what are we asked to do? While we pay three-fourths of the taxes, and they one-fourth, and while they draw from the treasury, more than they pay into it,

we are asked to adopt into our Constitution an article by which the whole political authority and tax-laying power of the State, shall be transferred beyond the Ridge ! Sir, I do not say, nor do I believe, that the people west of the Ridge, are any less moral, or in any respect, worse than those to the east of it : but I would ask them, with all frankness, whether *they* would feel safe in the like circumstances ? Whether such a state of things could be called Republican ? Or, whether it would not interfere with the very first principles of Republican Government ? I ask, what is the money raised by taxation in a free Government ? Is it a contribution *extorted* by the power of a despot ? By the King or his Nobles ? Has any power, existing in a Republic, a right to take away from me, 10, 20, 50 per cent. of my property, without any consultation with me or my representative ? No, Sir. It is of the very essence of Republican Government, that all money raised for public purposes, shall be the voluntary donation of the people, by themselves or their agents. But what sort of a donation is that, where another lays the tax and makes the donation out of my property ? Is that the donation of the holder ? Sir, I was surprised when the gentleman from Norfolk said, the other day, that taxation and representation, sprang from different fountains, and flowed into different and distant oceans.

My little reading had led me to believe, that the representative principle in modern times, and as it now exists upon the American Continent, owed its birth to the British House of Commons ; where representation, according to our notion of it, first existed. That was the *model* from which all the various forms of representative Government, in North and South America, have been taken. In some instances we have improved upon it : in others we have fallen below it ; but varied as our forms are, the House of Commons was our original model. Now, that House had no authority in the beginning, but from the fact that its members were the tax-layers. They were called for the purpose of affording aids to the King, out of their property. Sir, it was this searching power of taxation, which gradually elevated the House of Commons, until they were enabled to say to the proudest of their Monarchs, we will not grant you the money for which you ask us, unless we know and approve the purpose to which it is to be applied. From this fountain have proceeded all the Republican Governments on the American Continent. The gentleman is much mistaken in supposing that these two powers are so little together. But let us now recur to the principle that the grantors have a right to be first consulted before their money is disposed of. We are told, Mr. Chairman, that we must rely on the morality, on the integrity and virtue of the majority as a sufficient guarantee. I know the people who live beyond the Ridge ; I am acquainted with their character ; and I most cheerfully admit that there are none on whose virtue and honor I would more readily rely. But the gentleman from Orange very truly said, that the principle on which all free Governments rest, is not confidence, but jealousy and watchfulness. Would not the good sense of gentlemen feel shocked, if any one here should propose that the Legislature of Ohio should be empowered to tax Virginia ? Is there a man on this floor, who, on hearing such a thing mentioned, would not cry out that it was too monstrous a proposition to be tolerated ? Now, Sir, I believe that the gentlemen who constitute the Legislature of Ohio, have a general feeling towards Virginia of kindness and good will ; and that their integrity is as great as our own. But why revolt, then, at the very idea of their having power to tax us ? Cannot we rely upon their morality, their integrity and virtue ? Sir, it is not because we deny, or even suspect their morals, that we shrink from such a proposition ; but because the Legislature of Ohio cannot know as accurately as we do, the situation of this part of the country, with which they have, comparatively ; little connection, and no fellow-feeling ; and because men vote taxes with much less caution and care when they do not expect themselves to pay any part of the tax, than when they are personally interested in its effects and responsible to those who must pay. It is one thing to give your assent to a requisition which falls upon those you never saw, and quite another to vote for it when you must go back and bear your own share in the contribution, and face those who are to bear the burden with you. If this principle, viz : that those alone should have power to lay a tax who will be required to pay it, be not a fundamental principle of a representative Government, why is it that the tax-laying power is, by the Federal Constitution, confided to the House of Representatives alone ? Why, in a great majority of the States, is the same provision engrafted, that money-bills shall originate in the popular branch of their Legislatures ? And if it be, on what ground does the principle rest ? Obviously on the fact, that in that branch there will always be found more of the men who are to pay the tax, and who feel intimately with the people, the weight of their financial burdens. Sir, these principles are the very corner-stones of a free Government, and they constitute very striking features in all our State Constitutions. Grant now to the gentlemen, what they are asking by the resolution of the Legislative Committee ; and will any one of these principles be brought to bear upon the property of the people who live in the south eastern portion of Virginia ? People who hold about 400,000 slaves, and who furnish nearly all the revenue

of the State? Taxation is the grant of a people holding property for the purpose of supporting the Government of their choice. But how is it to be a donation? If it is made by the Legislature of Ohio out of the funds of the people of Virginia, all men see at once that it can be no such thing. But if it be done by those who pay less than one-fourth, where we pay more than three-fourths, how is it more our donation than if it was given away by the Legislature of Ohio? Sir, all our property will be swept from us by the plan we are gravely asked to adopt as fair and equal. The people of the west, for example, want to make some Appian, or some Flaminian way, or some Roman aqueduct, or some other such splendid work of Internal Improvement: (It is not my purpose to ridicule works of Internal Improvement. There are some of those works, in support of which, under proper circumstances, I would go as far as they;) but they wish, perhaps, to unite the waters of the Ohio and Potomac, and so they must tunnel the Alleghany. Well, Sir; what will be done? Will they lay taxes to effect these great projects? No, Sir, not all: not at first: they will begin not with taxes, but with debt, and debt is always taxation at last: pay-day must come: and when it has come, then comes the tax; and how is the tax collected? Why, Sir, one-fourth part of it, and less than that, is collected to the west of the Blue Ridge, (i. e. where the great project is carried on) and the remaining three-fourths of it is collected; where, Sir? in the country south-east of that Ridge. When you come to the vote for laying the tax, every member from the south-eastern country is dissatisfied; every one of them is convinced the scheme is totally impracticable and a mere waste of the public money; and he speaks and votes against it. And what is the effect of their votes? just what it would have been had they all voted the other way. The donation is made; and it is made out of their property; but it is made by others: it is made by men who embrace entirely different views; and have entirely different interests; men who act most honestly in the matter, being sincerely and strongly of opinion that the project is of great importance; very practicable, and very desirable. Sir, is this a donation? I ask, are the three-fourths of this tax a donation of *ours*? No, Sir, the money is *taken*: it is taken from us: not by Legislative "rapine;" not by the perpetration of wickedness; not at all; but taken from us *against our consent*, because they are of a different opinion from us; and that with respect to matters on which there is confessed to be room for a wide, yet honest difference of opinion. Mr. Chairman, I fear to entrust my brethren with such a power: I fear it because they are not accountable to those whose money they take and have no common interest with them: that is the reason, the republican reason, on which I ground a refusal of their claims.

If I am right, then the highest degree of moral virtue, the most pure and unblemished integrity, and I had almost said, the most sublime intelligence, afford us no adequate protection: for men always have differed, and always will differ, in questions involving great and expensive objects of national enterprize. When the time comes at which the taxes must be levied (though they will not, as I said, begin by direct taxation; nay, it is probable there will be some diminution of taxes for a time, because they will resort to debt, which the people cannot feel, but come they must,) they will fall on those who were never consulted or who were voted down.

Sir, my friend did say that the great principle which lay at the foundation of our revolution, was involved in the amendment now before you; and I am, I confess, of the same opinion. Are not the cases parallel? do they not rest upon the same principle? viz: that the money of the people is not to be taken but by the consent of themselves or their authorised agents? Sir, what was the American Revolution? was it not the resistance of a claim set up by the British Parliament to tax the Colonies without their consent?

We have been told by the gentleman from Brooke (Mr. Doddridge) that America resisted the demand, because, though England and America were under the same Crown, they were different nations; just as Scotland and Ireland were before the union; and so the Legislature of the one could not tax the other. But, Sir, the Colonies came under the British Crown in a way very different from Scotland or Ireland. The question between America and the mother country could never have arisen if she had been situated toward the Crown as was either of those kingdoms. The Charter which fixed the boundaries of Virginia was granted by the King of England to English subjects; to subjects who resided in London; and for a long time, the whole Government of Virginia was conducted in London, subject, however, to the control of Parliament; and it was only after the Colony had become too populous to be thus managed any longer, that the grant was made to it of having a Provincial Assembly. Our situation was more analogous to that of British India, than it was to Ireland or Scotland. But, Mr. Chairman, it was not because Parliament undertook to tax us while we were not represented in that body, that America drew the sword: it was because our Colonial Charters had declared that the Colonists should enjoy all the rights of native-born British subjects; and one of these rights was, that you should not touch their property but by their own consent. That was the ground, and the

true ground, of our revolutionary struggle. It was not that we had no representation in Parliament: for as to that, it was even pretended that as by our Charters, our lands were to be held as of the Manor of East Greenwich in the kingdom of England by the tenure of free and common soccage, we constituted a part of the diocese of one of the English Bishops, and were, therefore, virtually represented in the person of his lordship in the Upper House, and by the members from Kent in the other. But our ancestors well knew that representation in Parliament would be no security against oppression. Suppose, to quiet our discontents, Great Britain had offered to allow us to be represented, to how many delegates should we have been entitled? Let us see; there were the two Adamses, and Hancock, and Franklin, and Lee, and Henry, and the Rutledges. Why, Sir, upon the principle contended for by gentlemen, we could not have been authorised to have more than twenty or twenty-five of them; thirty perhaps. (Here a shrill and very peculiar voice was heard to say "less than the county of Wilts.") Less than the county of Wilts, I hear it suggested. Well, Sir; suppose them seated in the House of Commons. A tea tax is proposed. They get up and resist it: they tell the Parliament, in our own American phrase, that America "can't stand it." Suppose them to declare that she ought not to stand it, till at length, *waxing* warmer as they proceed, they tell the House, America *will* not stand it; she will resist the tax. Sir, would it answer any purpose to say this to the Minister in a body containing five hundred members? Some gentleman would immediately get up and say, "Why gentlemen, you are in a minority: you may vote against this tax, if you please; but we, who are more capable of judging what is best for America and for the whole empire, say the tax must be raised." What is the consequence? These old revolutionary men come back; they are asked in some town-meeting, or other assemblage of their fellow-citizens. "How came you to suffer this tax upon tea to be laid?" And they would say (according to gentlemen's doctrine) "we did not consent to the tax; we resisted it to the utmost of our power; we were fully heard; but, the majority was against us; we could not help it; and you must pay the tax; that's all. The money was wanted: It was necessary to aid Frederick to confirm his conquest of Silesia: it was indispensable to prevent a French Prince from mounting the throne of Poland: it must be had to enable the German troops to cross the Rhine." The citizens very likely would reply, "why, what are all these things to us? We care nothing about Frederick, or Silesia either: is our money to go for such projects?" The old men would shrug their shoulders, and reply, "you must e'en pay the tax." Would the men of the revolution, have suffered the powers of this great nation to be crushed in the cradle by miserable sophistications like these? Sir, I ask you, if they were not made of sterner stuff? Would they not have said to the people of the United States, (what they did say,) "unless you resist this, the resources of your country will never be unfolded: you can never reach the period of manhood: you must resist, or be ruined."

Sir, I bring no charge or accusation against gentlemen on the other side: I have no doubt whatever of the purity of their motives: but, for myself, I cannot imagine a more frightful despotism than to enable one great division of the country to set itself in opposition to another great division of it, and by a majority of one single vote, to take from them whatever they please.

We are told that when we have given them supreme power, they intend to exercise it with great mildness and moderation; that they will not avail themselves of it to do the least injustice, but will manage our affairs with great forbearance and liberality.

But might not the same language be held to the subjects of the most absolute despot on earth? Despotism does not consist in the actual *exercise* of arbitrary power. The greatest despot in the world may be constitutionally mild, and may rule his people with great clemency. But it is the *authority* to oppress, which constitutes despotism. And if we are to be so situated, as to be left absolutely dependent upon the will of others, and nothing we can do or say is to have the least effect in resisting it: if we are to rely for our security upon the mere *sic volo* of another man, what will they be but despots? and what shall we be but slaves? Sir, do we ask any thing which may enable us to be thus despotic over them? No, Sir, we are but asking what we have obtained already, in the Federal compact. We ask only that *that* shall be done in Virginia, which has been done in the Carolinas, and has produced nothing but perfect concord: and which has been done by our sister Georgia, and produced there the most entire domestic tranquillity. If you yield to our proposal, of a mixed basis of representation, it will not throw the people of the west at our feet, as the adoption of the other plan must infallibly throw us at theirs. Let us set off to lay what taxes we please, to operate beyond the mountain, and their operation must be precisely equal upon ourselves. With the exception of slaves only, the articles of taxation are the same on both sides of that boundary: so that we must either tax ourselves with them, or be guilty of the open barefaced villainy of saying in our law, that the tax shall operate on A, but it shall not in like circumstances, operate on B.

But, surely, Sir, there can exist no danger that either we or they will thus use the taxing power. Among honorable men, it is surely not necessary to say that taxes shall be made to operate equally on all in like circumstances. But, Sir, while we are thus restricted, so that we cannot tax our brethren unless we also tax ourselves, *we* have a species of property which *they* have not; and on which they may lay what tax they please, without themselves paying under that law, a single dollar. And this too, a sort of property, the most easy to be taxed of all others, and the most certain of raising the money. Payment is inevitable. But, suppose us to lay a tax upon cattle: when we go to look for the cattle of our brethren of the west, where are they to be found? Their's, Sir, are the cattle on a thousand hills: they raise enough for their own use, and ours: and have a large surplus besides, wherewith, to supply a foreign market; while we have so few, that we can hardly make our own butter; and yet, strange to tell, when we did once make the experiment, of laying such a tax, we had ourselves to pay the greater part of it. Sir, it depends, altogether, at what season the tax-gatherer happens to visit our brethren, whether *they* shall pay the tax or *we*. I don't believe, Sir, that the number of their cattle is known even to themselves; and I dare say, there are gentlemen here present, who would not know their own herds, if they should meet them on a mountain twenty miles from home. But, lay your tax upon slaves, Sir, and *they* are not fattened this week, and gone the next, before the tax-gatherer can come for his dues. They are here; I had almost said they are fixed here firmly; but I know there are some gentlemen, who tell us, that we shall, at some future day, get rid of them all. Sir, I give all credit to the integrity of the west; but, really, if this plan of their's shall succeed, the prophecy may possibly be fulfilled; for, then, I think, we shall be obliged to give them up. Not that I have any fear, that when these gentlemen get the power, they will pass a general emancipation law; but, if they raise the tax on slaves, much higher than it is, one of two things must happen: either the *master* must run away from the *slave*, or the *slave* from the *master*. The more fertile districts of the State; the rich low grounds of James River, for instance, may be able to bear a greater burthen; but upon the increase of the slave tax, much of it must be paid by that portion of the lower country which consists of sterile ridges. Slave-labour upon them cannot stand it, and if they go on to raise the taxes, our slaves must go somewhere else, because we cannot keep them.

Perhaps some gentlemen may consider it a very desirable thing, that we should be reduced to such a necessity; but, Sir, let it once be known, that this separation of the master and his slave is not a voluntary thing on either side, but a matter of compulsion, produced by the agency of the Government: I care not, whether this agency be manifested by the passage of a law of emancipation, or a tax-law depriving the master of the power of holding his slave: and soon a sword will be unsheathed, that will be red with the best blood of this country, before it finds the scabbard. This thing between master and slave, is one which *cannot* be left to be regulated by the Government. Compensation for 400,000 slaves, *can* not be made. The matter must be left to the silent operation of natural causes. Sir, I impute no evil purpose to our brethren of the west; but I never can, nor will consent that it shall be left for them to say what tax shall be paid on the slaves of Virginia, while their owners have no voice in the matter.

Sir, let us choose a middle ground: a ground which so many of the Republics of America have already taken: let us agree upon a compound basis of representation, and remain a united and harmonious people.

After Mr. Morris had closed, the Committee rose, and the Convention immediately adjourned.

SATURDAY, OCTOBER 31, 1829.

The Convention assembled at eleven o'clock, and was opened with prayer by the Rev. Mr. Skidmore, of the Methodist Church.

On motion of Mr. John S. Barbour, the Convention resolved itself into a Committee of the Whole, Mr. Stanard in the Chair.

Mr. CAMPBELL (of Brooke,) then addressed the Chair, in nearly the following terms:

Mr. Chairman—I have never been in the habit of making apologies; I never liked them. When I hear apologies from gentlemen, who, either have acquitted themselves well, or expect to acquit themselves well, I am reminded of the lady in the play;

Who, in hopes of contradiction, oft would say,
Methinks, I look so wretchedly to-day.

But really, Sir, I am compelled to make an apology on the present occasion. When I rise to address an assemblage composed of such illustrious patriarchs, sages and politicians; when I consider their superior age, experience and attainments, and that I am not only little experienced, but without experience in such addresses as I am now to make, I cannot but feel embarrassed and intimidated. But, Sir, this embarrassment arises most of all, from the fears which I entertain, that I may not be able to do justice to the cause which reason and conscience have compelled me to espouse. Nay, Sir, I know that I cannot do it justice; and I sincerely say, that I do not expect to meet the expectations of its friends. But I am compelled to contribute my mite; and well, I am assured, that it will be a very small contribution indeed.

I am a *man*, Sir, and as such I cannot but feel interested in every thing which concerns the prosperity and happiness of man.

I feel myself one of the race, and when I consider our origin and our destiny, I see so much to interest me, I cannot but feel a deep interest in every thing connected with the happiness of my species. I am not, Sir, believe me, under the influence of district or local feelings. In all matters to be discussed here, I am a Virginian. I feel myself inspired with that spirit, which regards the interest of every man, slave-holder or non-slave-holder in the State. If I lived in Northampton, I would advocate the same principles which I now do in coming from Brooke. It was *principles*, Mr. Chairman, which brought me here. *Principles*, Sir, which reason, observation and experience convinced me, are inseparably connected with the temporal prosperity of men; and of our State of Virginia: And principles, Sir, which are not to be sacrificed. I know, Sir, that local interests, and district feelings, can only yield to principles. Animosities and contentions must arise between rival interests, unless fellow-citizens are determined to be governed by principles. Too often it happens, from clashing interests, that—

Lands intersected by a narrow frith,
Abhor each other, mountains interposed
Make enemies of nations, who had else
Like kindred drops, been mingled into one.

But, Mr. Chairman, we are entirely out at sea in this debate. We set sail without compass, rudder, or pilot. So anxious were some gentlemen here to put to sea, that when we called for the compass and the pilot, they exclaimed: Never mind, we will get the compass and the pilot when we get to port. We are now a thousand miles from land. Gentlemen are making fine speeches upon the elements of the ocean, and now and then upon the art of sailing. It will be well if the *rari nantes in gurgite vasto*, apply not to us.

I wanted, Sir, to take the pilot, the compass, and the rudder aboard. But in the good old laconic style, the gentleman from Augusta, exclaimed, "*write the preface after you have written the book.*" Yes, Sir, we shall learn the language before we learn the grammar; we shall demonstrate all the propositions in Euclid, and then learn the *axiomata*, and the *postulatu*; we must build the house and then lay the foundation; we must heal the constitution, and then feel the pulse.

I am sorry, Sir, that we did not first establish the principles, or at least, agree upon all the principles on which the frame of Government should be based, before we attempted to form the Constitution.

I see no reasonable bounds can be fixed to this discussion. Every gentleman here has to tell us his own principles, or to oppose those of others; and more than the half of every speech yet pronounced, has been in defence of mere abstractions, as some gentlemen would call them. For my part, I never could reason without some principles to reason from, and some point to reason to. The Bill of Rights of '76 has, it is true, been declared sound doctrine, but gentlemen seem to me, to be continually oppugning it.

Call me orthodox, or call me heterodox, I confess that I believe, that in the science of politics, there are as in all other sciences, certain fundamental principles, as true and unchangeable as any of the fundamental principles of physics or morals.

It is just as true, that Government ought to be instituted for the benefit of the governed, as that a whole is greater than a part; or that a straight line is the shortest possible distance between any two given points.

I had intended, Sir, to examine the arguments in detail, offered by gentlemen in favor of the amendment. Not as if these arguments had not been already refuted, if I may be allowed the expression, by other gentlemen who have preceded me, on the side of the question I espouse. But, Sir, I have found such a similarity of argument, used by the very eloquent pleaders for the basis of wealth and population, that I have this morning rather abandoned the idea of going into these dry details. It will still be necessary, that I pay some attention to some minor matters, which, in my judgment, involve important principles, and the more especially, as the public mind will consider every thing offered here, as of some importance. This community, Sir, will be much indebted to the gentlemen, who have been at so much pains to furnish all

the deliberations of this Convention. They will furnish much information, necessary to prepare the public to judge of the merits of the Constitution, which we are to submit to them. Although I am not capable of throwing much, if any light, upon these subjects, I cannot but rejoice that so much will be elicited; and that the public, both our cotemporaries and posterity, will be able to decide upon the wisdom and utility of the various schemes advocated in this Assembly. Yes, Sir, posterity will be able to applaud or censure the views presented, and the course pursued by the advocates of the respective projects.

The remarks, which I am now to offer, will tend to establish four important items: 1. That the principles of the friends of this amendment, are based upon views of society, unphilosophic and anti-republican.

2. That the basis of representation, which they advocate, is the common basis of aristocratical and monarchical Governments.

3. That it cannot be made palatable to a majority of the present freeholders of Virginia: And,

4. That the white population basis, will operate to the advantage of the whole State.

1. I could wish, Sir, that my sole object now was, to fortify and illustrate these positions; but with a reference to the matters before me, I can only attempt this incidentally. My province is rather to follow those on the affirmative, or who plead the policy of the amendment, than to go into new details. Yet still, Sir, I expect, that some or all of these points will be illustrated in the review proposed.

The gentleman (Mr. Morris,) from Hanover, gave us yesterday, a splendid display of his rhetorical powers. I wish I could commend his *logic*, as sincerely as I do his rhetoric. His whole speech was founded upon two or three assumptions, as, indeed, have been those who preceded him on the same side. And, Sir, allow me two or three assumptions, and I don't know what I could not prove. He assumed, that the only legitimate meaning of the Bill of Rights, was to be learned from the Constitution: That the meaning of the phrase "permanent common interest with, and attachment to, the community," meant, a *freeholder*, with twenty-five acres of land, and a cabin on it. But again, he defined the term *freeholder*, as signifying in the year '76, a *slaveholder*. He assumed in the next place, that slave-property was protected, though not named in the Constitution, in confining the Right of Suffrage to freeholders alone. So I understood him. Now, Sir, let these matters be conceded, and the gentleman from Hanover, has the foundation for a fine oration. But another assumption was yet necessary to give wings to his imagination. He must, contrary to the very lucid and statistical expose of the gentleman from Frederick, whose speech he never noticed, he must, I say, assume, that if white population only, should be adopted as the basis of representation, then the non-slave-holders would have the exclusive control in all Governmental arrangements, and would, at once, interfere with the rights of masters to their slaves. Then, Sir, his feelings were roused to the height of true eloquence, and with an inspiration drawn from this view of the matter, he retires with a sword in his hand, stained to the hilt with the best blood in Virginia. I do not think it necessary, Mr. Chairman, to expose an argument, any farther, than to shew it is based upon *assumption* only. Thus shewn, and although it may please our fancy, it cannot inform our judgment.

He then took us with him to London, and shewed us the British Parliament, with some twenty or thirty Americans amongst them. The stamp and tea tax are in debate in the British Parliament, and the American Colonists are found of course debating and voting against it. But what are "twenty-five against five hundred!" Home they come, and tell the doleful tale. They inflame the people, and preach rebellion. They are a minority and must rebel, because they cannot submit. If this picture was pertinent, and designed to operate upon this Committee, then, Sir, it must have been designed either to discredit the popular doctrine of these Republics, viz: that the minority must submit to the majority, or that if the gentleman should find himself in the minority, he would not submit his property to the control of the representatives of white population alone: in fact, this doctrine would lead all minorities into rebellion. I forbear to follow him to Ohio, as this allusion had no reference to any sentiment expressed in this House.

I am sorry to observe so strong a dislike to the doctrine of a majority, appearing in many of the gentlemen's speeches on this floor. If this does not squint towards aristocracy, if it does not lead us towards the principles assumed by the monarchists of the old world, I am not a judge of such matters.

I go back to the honorable gentleman from Culpeper. His first axiom was, *that all men have equal NATURAL RIGHTS*, but not equal *political rights*. That they have the former, he has conceded; but why they ought not to possess the latter, he has not shewn. If they have equal *natural rights*, they ought to have equal *Conventional rights*; else, one part of them surrenders a larger share of their natural rights, when they enter into society, than another part. But logic is yet wanting to shew why A, in entering into society, should surrender more of his natural rights than B. Will

some gentleman now, or at any future time, shew us the reason why A, in surrendering a part of his natural rights, should be obliged to surrender more than B?

I wish most sincerely, Sir, that that gentleman may yet be able to redeem a pledge which he has staked. He said, he hoped to be able to shew from the *Bill of Rights* itself, "that it was never contemplated to confer on *any man*, the right of governing another against his own consent." He and I most cordially concur in this sentiment, and I hope he may be inclined to go as far in this matter, as his honorable associate, the gentleman from Northampton, who has affirmed, "that he will hold no principle as true, which he will not carry out to its legitimate results." In this I concur with the latter gentleman: and if all the members of this Assembly, concurred with the gentleman from Northampton, Virginia would soon be generated from North to South, from East to West.

He next asserts that the *jus majoris* is not recognized as a *natural* right, but as a *Conventional* right. This may be true, but it will prove as much for us, as for him. In other remarks upon the Bill of Rights, this gentleman makes it a dead letter of very questionable import, and of as questionable authority. Yet, Sir, he decided it on one occasion, at least, to be a part of the Constitution of Virginia. In deciding the case of *Crenshaw versus The Slate River Company*, Randolph's Reports, vol. 6, p. 276, he says, "our Bill of Rights is a part of our Constitution, and the general principles thereby declared are *fundamental laws*, except so far as they are modified by the Constitution itself. They limit the powers of the Legislature, and prohibit the passing any laws violating these principles. The first article declares, 'that all men are by nature free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and *possessing property*, and pursuing and *obtaining happiness and safety*;' to deprive a citizen of any property legally acquired, without a fair compensation, deprives him *quoad hoc* of the means of *possessing property*, and of the only means so far as the Government is concerned, besides the security of his person, of obtaining happiness." So decided the honorable gentleman from Culpeper, when the present question was not before him; but we have an excuse for him in this instance. He had been so much engaged in fortifying his amendment from deductions from Cocker's arithmetic the evening before to shew, that while the wise men all came from the East, the march of empire was to the West, that his mental lights were, for the time being, eclipsed.

But, Sir, it is not the increase of population in the west which this gentleman ought to fear. It is the energy which the mountain breeze and western habits impart to these emigrants. They are regenerated; politically, I mean, Sir. They soon become *working politicians*; and the difference, Sir, between a *talking* and a *working* politician, is immense. The Old Dominion has long been celebrated for producing great orators; the ablest metaphysicians in policy; men that can split hairs in all abstruse questions of political economy. But at home, or when they return from Congress, they have negroes to fan them asleep. But a Pennsylvania, a New-York, a Ohio, or a western Virginia Statesman, though far inferior in logic, metaphysics, and rhetoric, to an old Virginia Statesman, has this advantage, that when he returns home, he takes off his coat, and takes hold of the plough. This gives him bone and muscle, Sir, and preserves his Republican principles pure and uncontaminated.

Bidding adieu for the time being, to the gentleman from Culpeper, I proceed to make my devoirs to the honorable gentleman from Northampton.

This gentleman starts with the postulate, that there are two sorts of majorities; of numbers and interests; in plain English, of men and money. I do not well understand, why he ought not to have added, also, majorities of talent, physical strength, scientific skill, and general literature. These are all more valuable than money, and as useful to the State. A Robert Fulton, a General Jackson, a Joseph Lancaster, a Benjamin Franklin, are as useful to the State, as a whole district of mere slave-holders. Now, all the logic, metaphysics and rhetoric of this Assembly, must be put in requisition to shew, why a citizen, having a hundred negroes, should have ten times more political power than a Joseph Lancaster, or a Robert Fulton, with only a house and garden. And if scientific skill, physical strength, military prowess, or general literature, in some individuals, is entitled to so much respect, why ought not those majorities in a community to have as much weight as mere wealth?

We admit that fifty men in one district, may have as much money, as five hundred in another; but we can see no good reason, why the superabundant wealth of those fifty should be an equivalent, or rather a counterpoise, against four hundred and fifty citizens in another. Why should not fifty men, possessing as much talent, as much military, scientific, or general information, in one district, outweigh four hundred and fifty nabobs, who are mere consumers or political drones in the national hive, living in another? Amongst those who place mammon on the loftiest throne, I know nothing weighs like gold. But according to the logic of the honorable gentleman from

Northampton, if Stephen Girard, an old man, without wife or child, now worth 12,000,000 of dollars, were to buy up one or two districts in Virginia, and depopulate them, and cover them with sheep and cattle, he might, if he would, become a resident and elect himself, and become a member of both the Senate and House of Delegates at the same time. But the property basis of representation, never can become tolerably rational, until each vote is valued at a given sum, and every man have as many votes, as he has the stipulated price. Fix the votes at two hundred or five hundred dollars each, and let him who is worth one thousand dollars, have fifty or twenty votes. This will give some semblance of equity to the procedure ; otherwise, a poor man in one district, may have the power of ten in another.

Yes, Sir, according to the doctrine of the gentleman from Northampton, one poor man, because he lives in the neighbourhood of a very rich man, would have more political power than the wealthiest citizen in the west, who lived in the neighbourhood of many poor men. This fact, alone, defeats the design of this gentleman's scheme, and shews its incompatibility with itself. This gentleman could find no law, or *right*, as he termed it, in nature, but the right of the strong to devour the weak. Brutal force governs every thing. He presented the lion devouring the ox ; the ox driving the lamb, the lamb something weaker, but last of all, the worm eating the elephant.

This, Sir, is but a small part of the incongruity of this honorable gentleman's doctrine with Republican principles. But he concludes, there are *no principles* in Government ; and his honorable associate (Judge Green) from Culpeper, declares, that men are governed by *interest* only. And, as for the poor, they have no affection, no love of country, no social feelings, no conscience, no religion ; they are all governed by mere cupidity ! No wonder the eloquent gentleman from Orange, affirmed that there is *no faith* in politics !

This gentleman, I mean the gentleman from Orange, in his clear and forcible oration the other day, began with the Bill of Rights, as usual, and with the first article too. I believe he admitted it to be true doctrine in theory, but dangerous in the application : *All men are born free and independent*. This is a position much older than these United States, and flowed from a gentleman, to whom, more than any other, these American States, are indebted for all their civil and religious liberties. Gentlemen may encomiase whom they please ; but there is no man more worthy of American admiration, than the statesman, the philosopher, and the christian who is the legitimate father of the first article of the Bill of Rights. I need not tell you, Mr. Chairman, that I allude to the Author of the Essay on Toleration, the Author of the Essay upon the Human Understanding. Now, Sir, I do not, because I cannot, concur with those gentlemen, who say that this article contains a truth, and yet maintain that it is dangerous in its application. Truth with me, Sir, is eternal, and what was true in morals, or in the science of man and Government five thousand years ago, is true still : truth is at least one day older than error. And, Sir, it is dangerous to depart from a truth so fundamental as that now before us. It will be found that the slightest departure from it in practice, will soon or late prove a curse to mankind. The departure may be gradual and imperceptible, like the gradual and almost imperceptible disinclination of two straight lines. Project them at one end, they meet in an acute angle ; but extend them a great distance, and at the other end they will recede from each other to a great distance. So may our departure from correct principles issue in an ultimate abandonment of our form of Government. The acute and discriminating gentleman from Orange, seems also to find fault with the third article of the Bill of Rights, which declares that a majority of the citizens of any State, have a right to alter or amend the form of Government, when it becomes disagreeable to them. He gave us a long recital of our failures to obtain majorities. He instanced the pluralities which, in most instances, decide our County, State, and United States' elections ; the usages in Congress ; and finished his recitation of departures from the principle and practice in presenting one juror controlling eleven. The genius who could find in a jury of twelve men, called to decide a question of fact, or even a question in-law, a proof for our departure from the principle of a majority, could easily infer that our republican institutions, might issue in a monarchy, and prove that we ought to establish a *minority* of men, with a majority of money ! But, Sir, in all these examples, it is mere convenience, and the supposed majority of wishes, coinciding with the plurality obtained, which reconciles these communities to these usages. I except the allusion to the Senate, and Congress of the United States, and the reference to juries, as not applicable to the question at issue, and as explicable upon other principles.

But, since I am come to the subject of majorities, I wish to make a remark or two upon the origin of them. The gentlemen on the other side, have triumphantly called upon us, to find the origin of majorities in the state of nature. Nay, indeed, they almost ridicule the idea of men existing in a state of nature. We all know, that men roaming at large, over the forests, could have no idea of majorities : it is not applica-

ble to them. But, so soon as men form a social compact, it is one of the first things, which, from nature itself, would present itself to them. The true origin of this idea, is found in the nature and circumstances of men. Man is a social animal, and in obedience to this law of his nature, he seeks society, and desires the countenance of man. But, as all men are not born on the same day, and do not all place their eyes upon the same object, at the same time, nor receive the same education, they cannot all be of the same opinion. Some arrangement, founded on the nature of man, for men's living together, must then be adopted. And the impossibility of gratifying their social desires, but in yielding to differences of opinion, presents itself among the very first reflections. In all matters, then, of common interest, when a difference occurs, one party must yield. They must either agree to yield, or to form a new community. But, which shall yield? All nature cries, the inferior to the superior; the weaker to the stronger; the less to the greater. It is, then, founded on the nature of things. And a moment's reflection will convince us, that, in case of a struggle, the minority must yield to the majority; for, they have the power, either to compel it, or to expel the disaffected. It is, then, as natural a conclusion and arrangement, as can be conceived.

But, Sir, there are some who deny the existence of a state of nature altogether. Were it imaginary, we can reason from it, as well as upon any other abstract subject whatever. But, Sir, it is not altogether imaginary. History affords some instances, of what is at least analagous to it, of dispersed individuals forming a social compact. We shall give an illustration of what history has recorded: History has informed us, that political communities have been broken up, and from their ruins, new ones have been formed. For example: Should some foreign enemy invade this country; and may Heaven long avert that day! I say, suppose that for our iniquities in Government, some foreign enemy should invade our country, and spread devastation, ruin and death through the land, a few might escape and flee to the most distant wilds, say beyond the Rocky Mountains. We shall select, for illustration of our principles, a few individuals, who will illustrate this state of nature, as well as many thousands. A community or a nation, is but a family on a larger scale. Suppose, then, A, B, C, D, and E, after having lived some two or three years, unknown to each other, in the wilds, should at some time meet. A, in making his escape, had snatched a bag of dollars; B had taken his wife; C, his rifle; D, his children; and E had nothing but himself. They are about to form a social compact. They have brought some of the old ideas with them, from their former society. A is an old Virginian, and begins the discussion. He says, "Gentlemen, Government is chiefly for the *protection of property*, and every man ought to have influence according to his property. I, therefore, contend for an influence, proportioned to my wealth. I know, that we have much need of wealth, in forming a comfortable settlement here, and many calls will be made upon me." B asks him, of what use was his bag of dollars to him since his arrival in the wilderness? Had he spent a dollar since he left the old society? Not one. "Society, Sir, continues he, is necessary to give use and importance to money; and you are as much indebted to us, for giving you an opportunity to spend your money, to obtain our aids, as we can be to you for such sums as we may call upon you for. Besides, Sir, without our society and assistance, you could not *prout* your money. We will afford you, not only the means of *enjoying*, but of *protecting* your wealth. I claim, Sir, twice as much influence in society as you; because, Sir, I have a wife. She has her interests and her wishes, as well as you or me." C rejoins; "I cannot, gentlemen, agree, that either of you shall have more power in our new Government, than myself. My *Rifle*, Sir, is of as much use, and my skill to use it, as either of your possessions. Nay, Sir, the day may be to-morrow, that the safety of our persons, and of our community, may depend upon me; and I think, that my claims, because founded upon the preservation of our very existence, are stronger than those of any other person, and entitle me, more than any other man, to greater political power. You recollect, Sir, that the great men of the Old World, were all Warriors and Military Chieftains. As for my neighbour B, claiming influence for his wife, it is absurd! Has she any separate interest from his? Has she not identified her interests with his? Can she have any will, affecting the community, but through him? Is not she his property, by the marriage compact?"

D rises. "My claims, gentlemen, are paramount to all others. I have many children. They are, Sir, the hope of every community. I claim an influence in Government, proportionate to my interest in it, and to the services which I may yet render it. I have no money, no rifle, it is true; but I have seven sons and daughters coming forward. They will be able yet, Sir, to create wealth, and to defend the community. I insist upon it, gentlemen, if any man in this community has a right to *any* more than his own voice, than his own personal weight; I have *seven* good reasons to offer, why I should have seven times more than he."

E says: "Gentlemen, I have neither wife, son, daughter, rifle, nor a single dollar. I am stripped of all extrinsic claims for superior weight in the Government. But,

Sir, I am not without other claims. I have learned to speak two or three of the Indian languages, since I became an inhabitant of these wilds. And, Sir, should any misunderstandings arise between us and them, I can be an *interpreter*, and may do more to prevent war, than any other member of our community. I claim, then, an influence, equal to this rarest and most useful endowment, which, Sir, requires so much labour and time to obtain, and which, when obtained, is so useful to society. But, I must protest against D's having seven votes for his seven children. They are minors, and under his control, and of immature reason. When they arrive at manhood, and are free agents, but not till then, shall they have a voice."

A rises: "Gentlemen, I see we all have claims for various portions of political power. I think we must abandon the idea of forming a social compact, upon these principles. I will claim only my single vote, and my single personal influence, and will yield my pretensions, if every other gentleman yields his. I will agree, that we all surrender ourselves, our property, our talents, and our skill, *pro bono publico*; that each man shall have his own personal influence, and in all contributions for the public service, each man shall contribute in his own way, according to his respective ability."

Mr. Chairman: Here we have in miniature something analagous to this state of nature, of which we have so often heard. And here we have the only true philosophy of the social compact. In this compact, Sir, as I understand it, every man surrenders himself to the whole community, and the whole community to him. We have no occasion to travel so far *South*, as the gentleman from Northampton, who penetrated those regions until he saw a *white devil*. Nor need we go so far *North* with the gentleman from Orange, who found a nation composed entirely of *women*. He seemed greatly concerned for the political rights of such a nation. But, Sir, he need not have troubled himself much on this account, for such a nation could not continue for more than five hundred years.

While, Sir, I am on the subject of such a state of nature, or viewing man as coming into society, may I not take occasion to observe, that man exhibits himself as possessing the right of suffrage, anterior to his coming into the social compact. It is not a right derived from, or conferred by, society; for it is a right which belongs to him as a man. Society may divest him of it, but they cannot confer it. But what is this right? It is that of thinking, willing and expressing his will. A vote is neither more nor less than the expression of a person's will. God has given to man the power of thinking, willing and speaking his will, and no man ever did as a free agent enter into any society without willing it. And, we may add, no men could form a social compact, without first exercising what we must call the Right of Suffrage. It is a right *natural* and *underived*, to the exercise of which, every man by nature has as good a reason as another. But this is only by the way.

Having now glanced at this state of nature, and the meaning of the social compact, which in my desultory and extemporaneous way I have done without much method, I would approach the great question, now pending before us: Remarking, however, that so soon as we depart from the doctrine, contained in the three first articles of the Bill of Rights, we abandon the radical principles of our Government, not only of the State of Virginia, but of every other State of the Union. [Here Mr. C. read and commented on the three first articles.] If the amendment should succeed, I shall consider these principles abandoned. A new principle will be sanctioned; the very principle on which the aristocracies and monarchies of the old world have been founded. Give men political power according to their wealth, and soon we shall have a legalized *oligarchy*; then come the thirty Tyrants; then follow the Quin decemviri; then the decemviri; then the triumvirate; and last of all, comes Julius Cæsar. Gentlemen talk of the docking of entails, and the laws of Parcenary; but a feeble resistance will these arrangements present to a reigning oligarchy. Men love power, and in proportion as they possess it, does that love increase.

This appears to me a controversy merely about power. One party speak as though they possessed it, and had it to bestow. Another contends for it as their right. It is not with me a struggle for power; it is for right, for principles, for justice. I do not think that in order to secure my comfort, happiness, or prosperity, it is necessary to invade the peace, comfort, or prosperity of any man. That I go for principles and not for power *per se*, I will now shew. And in shewing this, I will shew how unreasonable it is, for the opponents of reform to ask us for a *guarantee* against oppression. The power will be vested in the very hands of those who ought to hold it as umpires between the rival interests of the east and the west. We shall take the present number of Representatives for the data. That number is two hundred and fourteen: Of these, the forty-five counties and four towns on tide-water, have at present ninety-four representatives: on the white population basis, they would have only seventy-two and two-tenths representatives: That is, according to the Census of 1820; which will as correctly demonstrate the principle, as any document we could obtain. The country west of the Alleghany, containing thirty-three counties, has at present sixty-six re-

representatives. On the white population basis, that district of country would have only sixty-one and four-tenths. We should then lose four and six-tenths representatives. Thus the nine Senatorial Districts on tide-water would lose twenty-two representatives, and we nearly five. In all, these two Districts would lose nearly twenty-seven representatives. Now, the question is, what sections of the State would gain this power. We lose, but who gains? I answer, the twenty counties making the six Senatorial Districts east of and along the base of the Blue Ridge, would gain nearly twelve representatives, and in this District, there are no less than 136,919 slaves. The remaining fifteen representatives would be gained by the seven counties, or three Senatorial Districts in the Valley beyond the Ridge, having 23,963 slaves. Thus, the power lost in the counties on tide-water and west of the Alleghany would be deposited in that part of the State, which, from its central position and from its dense slave population, would be the safest deposit which the fears of the slave-holders could devise, and which would afford to them the strongest and best guarantee against those encroachments of the non-slave-holders which the evil-boding imaginations of some gentlemen have conjured up. We are not, then, Mr. Chairman, contending for power for ourselves, but for principles, which, let them operate as they may, we believe, cannot fail to benefit the whole State, by distributing power where it ought to be, and by divesting our Government of those odious aristocratic features, which have caused and are daily causing the sceptre to depart from Virginia. So repugnant are many features in our Government to the Republican feelings which prevail in other States in this Union, that a majority of our own freeholders cannot approve them; and if they cannot approve them, how can we suppose that citizens from other States can be induced to locate themselves amongst us?

The statistical documents submitted, and the argument deduced therefrom, further prove the fallacy of the hypothesis upon which the gentleman from Hanover, based the greater part of his remarks. It shews these to have been as groundless as that other assumption of his: that we were going to lose, or in danger of losing, the 1-11th part of our power in the Federal Government, if the doctrine of making *three white men* out of *five* negroes, or of putting *five souls* into *three bodies*, should cease to be the popular practice in Virginia. He did not tell us, indeed, why Virginia gave up 2-5ths of her slave population to the Union; in this she erred, unless she intended to give up the other 3-5ths to her own white population.

But that I may not too far impose upon the time or patience of the Committee, I shall only now call your attention, Sir, to one or two other items.

I have been sorry, very sorry, Sir, to observe in sundry gentlemen on this floor, a disposition to treat us as aliens, or as persons, who have no *common interest* with the people of the east. We have given them no reason to suspect our want of fellow-feeling, or of common interest. Let gentlemen but reflect upon the circumstances of this State in the year 1814. When all the militia east of the Blue Ridge were employed, or chiefly employed in patrolling the counties on the seaboard, and generally east of the Ridge, in order to preserve that property for which a guarantee is now demanded: I say, when your militia, Mr. Chairman, were all needed to prevent insurrections amongst your own discontented population, who was it that fled to your succour and protection from an invading enemy, who were disposed to harass your seaboard, and to augment the discontents of your slaves? The Valley and the west volunteered their aid. Yes, Sir, the single county of Shenandoah gave you twelve hundred men to fight your battles, or rather, the battles of their own State. They made a common cause with you. And, Sir, the bones of many a gallant and brave citizen of the west, lie in the sands of Norfolk. Men, too, who had no suffrage, no representation in your Government, sacrificed not their property only, but their lives also, in your defence. In one company, Sir, consisting of seventy-four persons, who marched from Culpeper Court-house, but two had the right of suffrage! Yet these men gave not sufficient evidence of common interest with, nor common attachment to, the community!!! Yes, Sir, from the very shores of the Ohio, from my own county of Brooke, they marched to your succour, and hazarded their all, their earthly all, in defence of that very country, and that very Government, which treated many of them as aliens in the land of their nativity.

We have been told that nearly 3-4ths of the tax has been paid by the counties east of the Blue Ridge. But these gentlemen tell us nothing about who fight the battles of the country. But, Sir, the disproportion between the east and the west, in the tax-paying department, will every day diminish. As the west increases in population and improvement, its ability to pay will increase, and its property will increase in value.

It were endless, Sir, to notice the many objections made against the surrender of power, or rather, the arguments offered, to retain a power already assumed and possessed. I will only remark, that it is said, that if the *white basis* should obtain, there will be endless discontentment among many of the citizens of this Commonwealth. But, Sir, if the *black basis*, or the *money basis*, as it should be called, should obtain,

would it diminish, or terminate discontentment or complaint? No, Sir; in that case, a majority, a large majority of the freeholders, would be irreconcilably discontented. And, Sir, if discontents, murmurs and complaints must, on any hypothesis, exist, the question is, whether in policy and in justice, they had not better be confined to the minority, than spread through a majority of the citizens of this Commonwealth? And which party would have the best reason to be discontented, let the umpires throughout all Republics decide.

But, Sir, in the last place, I must say that the policy of those gentlemen who advocate the money basis, appears to me, not only an anti-republican, but a short-sighted policy. That policy which augments the power of wealth, which tends to make the rich man richer, and the poor man poorer, is the worst policy for such a community as this is, and must be, at least for some time to come. Little do the rich think, when charmed with the fascinations of wealth and power, when they are eager to secure and augment both, by Constitutional and Legislative provisions, that they are fighting against their own offspring, and proscribing their own posterity. And, Sir, is not posterity, is not our children's happiness dearer to us than our own? Do we not duly see that riches are ever making to themselves wings? Is not the great wheel of fortune, as some gentlemen call it, eternally revolving. Those at the summit must descend, and those in the mire must ascend. Where are the noble and wealthy families that flourished in this Commonwealth some sixty or seventy years ago? Some of their descendants may yet be found sustaining the name, the talents and respectability of their ancestry. But how many of them have, to use the words of Bonaparte, sunk down into the Canaille? There are few of the wealthy now living, who have not their poor relatives and connexions, and how long, or rather how short a time, will it be, till the descendants of most of us will have merged themselves amongst the humble poor and the obscure? My views of men, and of the revolutions in human affairs, make me a republican. My love for my own posterity would prevent me from voting for the amendment, if I had no other consideration to govern me. If I had the wealth of Stephen Girard, I could not, feeling as I do, viewing human affairs as I do, looking back into history, or forward into futurity, I could not consent to build up an aristocracy, because I should be erecting embankments and bulwarks against those dearer to me than myself. I do most sincerely wish that gentlemen would look a little before them, and remember the lot of man, lest they should, in attempting to secure themselves from imaginary evils, lay the foundation of real and lasting ones. To conclude, Sir, the policy of those gentlemen who are securing, or attempting to secure to themselves exclusive privileges, and to defend themselves from an imaginary evil, reminds me of a character which Dr. Johnson depicts in one of the papers in his Rambler. A young gentleman much afraid of thieves and robbers breaking into his room at night, became distrustful of all the locks and keys in common use, as *guaranties of his person and property*. He put his ingenuity to work, to invent a new lock and key, which could not be violated. He succeeded to his wishes. He had his room fortified to quiet all his fears. He one day called in a friend to exhibit to him his ingenuity. It required some two or three minutes to lock and unlock the door. The gentleman after admiring and commending his ingenuity, remarked, why, sir, said he, this is certainly a great defence against thieves and robbers, but it is so difficult to unlock, I should fear that if the house were to take fire, you might be consumed before you could open the door and escape. I declare, sir, said the young gentleman, I never thought of that. Hereafter I will sleep with my door, not only unlocked, but half open.

Mr. Scott of Fauquier, rose to ask for the reading of the question before the Convention; which being done, he proposed to amend the amendment by adding, "and in the Senate, on white population exclusively." (The effect of this proposition would be, to apportion the House of Delegates, by population and taxation combined, and the Senate by white population exclusively.)

Mr. SCOTT, rose and addressed the Committee as follows:

Mr. Chairman: Labouring under a disease which not only emaciates the frame, but clouds the intellect, were I to consult my own interest apart from that which I have in common with the inhabitants of that portion of the State which I have the honor in part to represent, I should abstain from troubling the Committee with any remarks on the question now before it. But, Sir, I have a duty to perform which compels me to make the effort, however unsuccessful it may prove. Mr. Chairman, the people whom I in part represent, have not been in the habit of singing hosannas to the present Constitution. They think it has defects, and that they have suffered evils under its operation. I have participated in these sentiments. To remedy these evils we have united with our brethren of the west to bring about this Convention. But I fear they will prove Roman allies, and we shall only have the privilege of changing our masters.

Mr. Chairman: After the frost-work of mere abstractions, constructed by the gentlemen on the other side, had melted before the rays of the genius of the gentleman

from Northampton, the member from Ohio has endeavoured to build it up again, with what success I leave the Committee to judge. When I set about a task, Sir, my first enquiry is, what is the end to be accomplished? Having ascertained this, I then look about for the means which are at hand. The end which we all have in view, is to secure the blessings of liberty to the people of Virginia, and their posterity; the means by which we propose to accomplish it, is to recommend to them a frame of Government best calculated to attain that end. In constructing this Government, we are not necessarily driven back to the natural rights of man. If we are satisfied that the safety of the whole community requires, that the powers of Government should be placed in the hands of a minority, we are bound to recommend it to the people to place them there. And if they give it their sanction, the right of the minority is as legitimate as the *jus majoris* contended for by gentlemen on the other side. All the questions which can arise are mere questions of the fitness of means to an end. I would not be understood as discarding all principle. On the contrary it will be found that I agree with the gentlemen who are so very fond of theory in the principles which I shall take as my guide, although I shall apply them differently. The difference between these gentlemen, and myself, is this: they form a garment according to their ideas of exact symmetry without enquiring whether, or not, it will fit the person who is to wear it. I propose to take his measure before I apply the shears to the cloth. They profoundly skilled in the healing art, compound a medicine, containing the quintessence of the *Materia Medica*, and administer it in all cases. I propose to feel the pulse of the patient, and examine the symptoms, before I prescribe the remedy.

Mr. Chairman, I have already said, that the object of our labours, is to secure to the people of Virginia, and their posterity, liberty and safety of persons and property. To effect this, a certain quantity of power must be called into action. The first reflection which strikes us, is, that power entrusted to human agents, is liable to abuse. To guard against this abuse, constitutes the chief difficulty in framing a Government. The first expedient resorted to, is to call into action no more than is necessary to attain the end. Too much power is liable to run into abuse from its mere excess. The next expedient is not to confide all to the same hands: hence the separation of the Legislative, Executive, and Judicial Departments. But this separation has not in practice been found sufficient. It is not enough to check power by power. Some further security has been found necessary. The best reflection which I have been able to give to the subject, has brought me to adopt this maxim, "as far as practicable, to deposit power in the hands of those only whose interest it is not to abuse it." If we look around us into the ordinary affairs of men, we shall find that interest is the great spring of action. What is it that makes agriculture flourish? What is it that builds your cities, and makes commerce spread her wings? What inspires the poet and nerves the soldier's arm? It is love of wealth, fame, and distinction. In a word, it is self-love. I have not much experience in legislation, but I appeal to gentlemen here who are experienced both in Federal and State legislation, whether they are ever so sure of a vote as when they appeal to the interests of those whose vote they want. It would be out of order, Sir, to speak of the members of this House: One remark, however, I take leave to make. Although so much devotion is shewn to principles, the principles of gentlemen do quadrate most marvellously with the interests of their constituents. I do not mean to cast imputations on gentlemen. I do not mean to question the sincerity of their attachment to principle. But when I see honourable and intelligent men, with all their devotion to principle, unconsciously influenced by interest, I set an higher value on the security which interest gives against the abuse of power. The guarantee of interest constitutes the chief difference between Republican, and Aristocratic, or Monarchical Governments. The responsibility of public agents, resolves itself into this principle. By causing the law-maker to mingle with the people, and to be subject to the laws which he has enacted, you make it his interest to enact just laws. By subjecting him to re-election at short intervals, you make it his interest to consult the welfare of his constituents in order that he may be re-elected. Sir, I think I can boast of as many attached and disinterested friends as any gentleman here, but my experience teaches me, that I am never so sure of the good offices of another, as when I make it his interest to serve me. There are it is true, many bright exceptions to the influence of the selfish principle. The annals of mankind occasionally set before us examples of self-sacrifice on the altars of patriotism and virtue, but they are few when compared with the sacrifices of patriotism and virtue on the altars of ambition and avarice; and serve by their splendour, to render more visible, the dark shades of the human character. Here then we have a great principle founded in human nature, which will serve as a touchstone for every grant of power that we propose to make. Let us bring the question before the Committee, to this test. What will be the effect of the principle reported by the Legislative Committee? It will give to the people west of the Blue Ridge, if not immediately, in a very short time, a majority in the Legislature. No gentleman has questioned this, but my friend from Frederick. He seems to think that the majority of whites will remain, as it now

is, east of the Ridge. If we look to the documents furnished by the Auditor, we shall find that the increase of whites west of the Ridge, greatly exceeds that on the east; and if it should continue in the same proportion, a majority will, in a very short time, be found west of the Ridge. If we look at the face of the country, we shall come to the same conclusion. A great proportion of the land below the head of tide-water, is worn and exhausted. That between tide-water and the Ridge, is in a similar condition, except a strip bordering on the mountain. This is capable of regeneration, and will sustain an increased population. It is of less extent than what is called the Limestone Valley, which, from the fertility of its soil, is capable of sustaining a dense population. The country east of the Ridge, has no new lands to settle. There is no room for a great increase of population. A large portion of fertile land west of the Alleghany is yet unsettled; and when it is brought into cultivation by the influence of the Chesapeake and Ohio canal, it must give a vast accession to the population of that region. I will ask the gentleman, under whose patronage that work is progressing, whether he does not expect it will succeed? The population which this will add to the west, must be exclusively white. From the vicinity of the country through which it passes to Pennsylvania, slaves cannot be held there. But, Sir, it is unnecessary to pursue this argument farther. We have it on the authority of the gentleman from Brooke, (and no man is better acquainted with the situation and resources of that country,) that in thirty years a majority of the white population of the State will be found west of the Alleghany. I feel, therefore, warranted in assuming as the basis of my argument, that the country west of the Ridge, does now, or soon will contain a majority of the white population of the State.

Let us now enquire whether the people of that region can give the security we require against the abuse of the power which the Legislative Committee proposes to give to them. I agree with the gentlemen on the other side, that as a general rule, a majority ought to govern. A majority of persons will *prima facie*, comprise a majority of interests. But this rule is certainly liable to exceptions. The power of the majority must have limits. We all propose to limit it by denying to the Legislature the power of passing *ex post facto* laws, suspending the privilege of the writ of *habeas corpus*, &c. The only question is, what limitations shall we impose? I answer, all such as are necessary to protect the rights and interests of the governed. It is for me to shew that the limitation, which I propose, is necessary for our security. To that end, let us take a survey of the points of difference between the portions of the State, lying east and west of the Ridge. The first point of difference which strikes us, is the erroneous disproportion of the taxes paid by the two regions. I will not dwell on this part of the subject, after the luminous exposition given by the gentleman from Hanover. The next point of difference, is in the character of the population. Eight-ninths of the slaves are found east of the Ridge. In all laws relating to this species of property, the people west of the Ridge are interested to the extent of one-ninth only. But the gentleman from Frederick thinks that this property will not be in danger, because the slave-holders west of the Ridge, when added to those of the east, will give a majority. Suppose it is so. Why, I ask, should the people below the mountain, transfer all the power necessary for their protection, to the people above? This may be very agreeable to those who kindly offer to become our guardians. But the people whom I represent have a notion, (it may be a very unphilosophical one,) that their affairs will be never the worse managed, because they have a hand in the management of them. But, Sir, in that part of the Valley to which we are invited to look for protection, the slaves are to the whites as one to four. In the counties more particularly alluded to by the gentleman from Frederick, they are as one to three. The proportion which the slave-holders bear to the non-slave-holders, cannot be greater, and may be, and probably is less. It cannot be greater, because if the slaves be divided, so that no person shall hold more than one, there will be three who hold none, for one who holds one; and when the war between the non-slave-holders and the slave-holders shall be waged, the slave-holders will be outvoted at the polls. So far from protecting us, they will be unable to protect themselves. We cannot aid them, for they will have tied our hands. I ask the gentlemen representing that part of the State to which I belong, and which is deeply interested in this question, whether they are willing to accept of such a security as this? Would they not rather have the means of protection in their own hands? Will they not prefer the guarantee which I demand? With that security, we shall not want the lock of the gentleman from Ohio. I can trust my gold to a man whose interest it is to restore it to me.

There is another interest connected with this branch of the subject, which deserves our serious attention. Of the twenty-two members to which this State is entitled in the House of Representatives of the United States, seven represent the slave population. Now, if we establish it as a principle that the white basis is the true one for apportioning representation in the State Legislature, will it not follow that as between ourselves, it is also the true basis for apportioning members of Congress? And, if

so, the seven members purchased, I may say, by the slave-holder, will be seized upon as common property, and divided between the east and the west. I ask gentlemen of the east, and more especially of the middle region, whether they are prepared for this?

And if not, what do they propose to do? Insert an article in the Constitution forbidding it? Gentlemen from the west may say we will promise you not to take from you the representation in Congress which your slaves give you. I know not whether they will be willing to do this. Some gentlemen may think that this is a common fund, and may have this very thing in view, as a consequence of the measures they are now pursuing. If such are their views, they will no doubt avow them. But suppose such an article to be inserted in the Constitution, I doubt very much its efficacy. I will not undertake to say that it will not be efficacious. But I will say that reasons may be found strong enough for those whose inclinations and interest lead them to disregard it. Less plausible reasons have in practice been found sufficient to justify violations of what we consider the spirit, if not the letter of the Constitution of the United States.

The power to prescribe the times, places and manner of electing members of the House of Representatives, is, by the Constitution of the United States, given to the State *Legislatures*, subject to the control of Congress. Not to the people of the States assembled in Convention. When we have constituted a State Legislature, this power, it may be contended, is not conferred by us, but is derived from a higher source, the Constitution of the United States. We have given it being, and a capacity to receive this grant of power, but the grant is not from us, but another, and the extent of the power cannot be regulated by us, but is regulated by the instrument which confers it. The argument may not be strong, but if we judge from experience, it will be found sufficient for those who seek power. I ask, are we willing to put this interest at hazard on no better security? I answer no. I will not be satisfied with the bond, I must have a surety.

There are other interests to protect, and other abuses of power to be guarded against, of greater importance than those to which I have called the attention of the Committee. The different divisions of the State are not more strongly marked by geographical features, than are the different interests of the people who inhabit them. The Committee must at once perceive, that I refer to the subject of internal improvement. Those different, and in some respects conflicting interests, cannot safely be confided to the people of any one division. The people below the head of tide-water do not stand in need of turnpike-roads and canals. The improvements which are suited to the country between the head of tide-water, and the Blue Ridge, will embrace the Potomac, James River, and Roanoke, as far as the Ridge, the branches of these streams which rise below that range of mountains, and the various branches of the Rappahannock. The scale of improvement of the larger streams, suited to the wants of the middle region, is much inferior to that demanded by the western people; they would therefore, be but partially benefitted by the improvements which the interests of the people of the middle region, would lead them to make. Those demanded by the people of the Valley, will afford for the most part, no benefit to the people of the middle region, and little to those west of the Alleghany. They require that the Chesapeake shall be united with the Ohio, the James River with the Kanawha. The scheme of the people of the Valley, as we learn from the sages assembled at Charlottesville, is, as soon as the Chesapeake and Ohio canal, shall reach the mouth of the Shenandoah, to improve that river for two or three hundred miles, and when it shall reach the mouth of the south branch of the Potomac, to improve that stream for some one or two hundred miles: and when all these improvements shall have been accomplished, some small attention is to be paid to the Roanoke. To shew that the scale of expenditure demanded by the western people, greatly transcends any thing that we of the middle region have any occasion for, I will beg leave to call the attention of the Committee to the project which was before the last Legislature. It proposed to subscribe for stock of the Chesapeake and Ohio Canal Company, to the amount of four hundred thousand dollars: a farther sum to make a lateral canal to the town of Alexandria in the District of Columbia, and to improve the navigation of James river the distance of twenty-four miles, in the county of Alleghany, at an expense of \$260,000. This would have been a mere donation, for no man can pretend that the tolls would have been any equivalent for the expenditure. It was also proposed to subscribe the sum of \$60,000 towards the improvement of the various branches of the Rappahannock. Unconditionally? No, Sir: whilst the appropriation of \$260,000 to be expended in the county of Alleghany, was to be an unconditional gift, stock of the Rappahannock Company was to be subscribed for to the amount of \$60,000, upon condition that individuals would subscribe for and secure the payment of a like sum. Near half a million was to be allotted to the Potomac interest; \$260,000 to be given to the county of Alleghany, paying a tax of \$600; whilst \$60,000 only, is conditionally allotted to the counties of Spotsylvania, Stafford, Fauquier, Culpeper, Orange, and Ma-

dison, which, united, pay a tax of more than \$30,000. This is the measure proposed to be dealt out to the middle country, by our western friends, who ask us to place all power in their hands. I ask gentlemen representing this middle country, if they are willing to grant the demand. If we turn our eyes farther south, we find that at the instance of western men, a scale of improvement has been commenced on James river, which has resulted in the completion of twenty-nine miles of canal, near Richmond, and about six miles in the Blue Ridge, which, together, cost one million of dollars; and we have the authority of the Charlottesville Convention, for saying that this money has been thrown away, unless another million is expended, to connect these detached works. What benefit have the people, living immediately under the Ridge, derived from this expenditure? None. Worse than none. When the law passed, authorizing this large expenditure, a pledge was given them that no additional tolls should be demanded for the transportation of their produce, until, by the improvement of the navigation, the cost of transportation should be lessened. And how was that pledge redeemed? By a repeal of the law, and an increase of tolls upon their tobacco.

Whilst upon thirty-one miles of canal, to subserve western interests, one million of dollars have been almost thrown away, the improvement of the Rappahannock is estimated to cost about twelve hundred dollars a mile, including the great falls; and it is believed that it can be accomplished within the estimate. That of the Roanoke has actually cost about \$1,500 a mile, including the purchase of a number of slaves now employed upon it.*

I do not make these statements to throw odium on the scheme for internal improvements, but to shew that the different sections of the State have separate interests, and that the interests of one, cannot safely be confided to the absolute control of another. I do not ask you to give to the region, which I in part represent, power to control any other; I ask you so to apportion representation in the two Houses, as to guard and protect the interests of all. I do not ask you to give us power to do *mis-chief*, but to avert *evil*.

Mr. NAYLOR then addressed the Chair to the following effect:

Mr. Chairman: If those gentlemen who have been long accustomed to legislative debates; gentlemen who were well able to sustain a distinguished station at all times when thus engaged heretofore, felt embarrassed in addressing that Chair before this Convention, how much more ought I to feel embarrassment in making the attempt, who, I may say, have never been accustomed to debate in an ordinary Legislature.

Yes, Sir, and I do most sensibly feel it; and nothing but the solicitude I experience, arising from the importance of the question now to be decided, which creates a still stronger sensation, could have overcome that repugnance which might have deterred me from arising to address this body.

But I cast myself with confidence on its benignity and indulgence, while I occupy a short space of time, while no other gentleman seems disposed to occupy the time of the Committee. I would premise the few observations I have to make, by stating, that though conflicting opinions on a matter in controversy may appear to coincide with the interests of those respectively, who maintain those opinions, yet they may be held on each side with all the honesty and sincerity which a conviction of their truth can produce. This I believe to be the case on the present occasion. With this persuasion, and with the highest respect for the opinions of those gentlemen from whom I am constrained to differ, I beg leave to state a few of those reasons which thus constrain me to differ from them.

In attempting to remedy that glaring defect in the existing Constitution of Virginia, whereby the citizens of one section of the State have so much weight on the floor of the Legislature, and the citizens of another section have so little, (which is in the extreme as twenty to one,) it is contended on the one side that representation in the Legislature ought to be based on white population and taxation combined; because, as it is urged by the advocates of this basis, that property or wealth is of so much importance in civil society, that it ought to be protected, by giving to it a voice through its owners in the Legislature; diminishing by so much the voice of the people. This, on the other side, is resisted, because it is inferior in its nature to persons, in the same ratio that persons are more valuable than property in a community, and that it would thus be substituting the inferior for the superior, and usurping the place of and taking from persons their natural rights; and farther because wealth is adventitious, incidental, and too fluctuating in its nature for the basis of a fundamental law, which ought to be founded on well ascertained and unchangeable principles. But it is denied by the gentlemen who contend for this mixed basis, that there are any fixed principles to govern us in this case.

* At this rate, the money thrown away on James River, would, if applied to the improvement of the streams which rise below the Ridge, have given us a navigation of near 1000 miles.

It is contended by them, that Government is just what you can make it, (and therefore a struggle in which the most powerful may succeed; a game at which the most skilful may win;) that it is altogether conventional, to be regulated entirely by expedience. Therefore, the whole effort of those gentlemen has been to disprove the existence of those principles which we contend for, and, indeed, of any principles whatever to regulate us in this case. It was necessary that they should do this, as they have denied the primary right of the majority to rule. This principle is a barrier in their way, and if they do not remove it they cannot get on. But this is not the only one to defend us, although we might rely upon it with safety. Nay, we have no cause to fear to meet them hand to hand in the open field of expediency. But if they had even carried this barrier, there is another just behind it which I think they never can pass; that is the public sentiment, and universally received opinion, not only of the people of Virginia; but of the whole United States. If there is any political sentiment common to them all, it is, that the majority ought to rule. You may travel any distance you please in Virginia, and ask the question of every man you meet, whether he thought the majority have a right to or ought to rule in a Republican Government; and if he did not laugh at what he thought so simple a question, he would unhesitatingly answer in the affirmative. Yes, Sir, and this would be universally the case, from the man of grey hairs down to the stripling of tender years. And it has been truly said by a wise and experienced statesman, that he was most unwise in framing a Government, who disregarded the fixed opinions, and even prejudices of the people. But by the proposed amendment it would be provided in the Constitution, that the minority might rule. Can it be supposed that a fundamental law like this, so much at war with all those political opinions which have grown with the people's growth and strengthened with their strength, and have become interwoven with all their thoughts, could prevail with them or be endured by them? Certainly not. A Republican Government can only be sustained by public opinion: erect it on any other foundation, and you build upon the sands: when the rain descends, and the storms beat upon it, it will fall. But the gentleman from Hanover (Mr. Morris) seems to think that we have given it up as a principle in a Republican Government, that a majority have an inherent right to rule. I, for one, have not given it up, and I do not know, nor am I persuaded that any other gentleman has. I do contend that there are fixed principles in the science of Government, as well as in other sciences, and that this is one of those principles, and a leading one. To stop now to prove that there are such principles, would be a work of supererogation, especially after what the gentleman from Frederick (Mr. Cooke) has said on that point. It would, indeed, be attempting to prove axioms or self-evident propositions.

I would as soon believe that there was no truth, no justice, no rule of right or wrong, as to believe this. If there is no undeniable truth here, such as are called first principles, we have nothing to reason from; we have no premises and can never come to any conclusion. If each is at liberty to choose their own premises, they must always come to different conclusions.

We would be thus at sea without star or compass to guide us, veering about to every purpose, on the great deep of expediency. But, that there are such first principles, the Bill of Rights declares, and in so many words recommends a frequent recurrence to them, and this has been the political creed of Virginia ever since she became a Republic, unless we have abandoned this creed and departed from the faith. And since the existence of these first principles is indisputable, the only enquiry now is, what are they? and how are they to be discovered? The answer is, that they are to be discovered in the same way as in all other sciences, that is, by tracing back those sciences to their primary elements. We must then, in this case, refer to man in his primitive condition. I know that the idea of man ever having been in what is called a state of nature, is ridiculed as being imaginary only, and as being a state that never had an existence in fact. It is not necessary to dispute about this, though more instances than one of this kind can be referred to in history. But in reasoning upon the subject, we have a right, for the sake of the analogy, to pre-suppose it, just as a mathematician pre-supposes a line and a point before he proceeds with the demonstrations which carry conviction with them, and cannot afterwards be disproved, by saying that the mathematical line and point were only imaginary, and that they never had a real existence. We cannot, indeed, divest ourselves of the idea of the state which man must have been in previous to the formation of the social compact. This was a treaty to which every member of the community became a party, by which they unanimously agreed to form one body, and so became incorporated as such.

This was formed not only by the consent of the majority, but by the consent of the whole. And when the compact was formed, it resulted from the very nature of the case, without any formal stipulation, that it could only act, move or be guided by the consent of the majority. True, they might afterwards by the consent of that majority, agree that a minority should rule, or they could agree to create a monarchy; but still the act that created the oligarchy or the monarchy, was the act of the majority.

This majority was still the fountain of the delegated power, which proves what I contend for, that there was an original, inherent right in the majority. For this, I have the authority of as great a political philosopher and constitutional jurist of the last or present age, viz: John Locke, Esq. A passage from his work on civil society, I beg leave to quote: "For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. For that which acts any community, being only the consent of the individuals of it, and it being necessary to that, which is one body, to move one way, it is necessary the body should move that way, whither the great force carries it, which is the consent of the majority; or else it is impossible it should act or continue, one body, one community, which the consent of every individual, that united into it, agreed that it should; and so every one is, bound by that consent, to be concluded by the majority. And therefore, we see, that in assemblies empowered to act by positive laws, where no number is set by that positive law, which empowers them, the act of the majority passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole. And, thus every man, by consenting with others to make one body politic, under one Government, puts himself under an obligation to every one of that society, to submit to the determination of the majority, and to be concluded by it." And, I think, it further goes to prove that man had an original, inherent right of suffrage, because it was by the exercise of this suffrage, that is consent, that he formed the social compact. He did not derive it from the social compact, for it existed previous to the existence of the compact, and by it he formed the compact; it was the cause of the compact, not the effect of it; it was, therefore, original and inherent. Property could not be regarded in this compact, for it was not recognized, and did not exist previous to it. There must, then, have been a second compact formed, before any one could claim representation for property. But if the majority of persons had and has an inherent right to govern, upon what principles can you give that right to a minority because they possess a majority of wealth? None certainly of justice, none according to the eternal fitness of things. This is what the gentleman from Northampton denominates a majority of interests; that is, the rich man and man of wealth: but this is the principle on which all aristocracies and oligarchies have been, and the Holy Alliance is founded, and therefore has tendencies to which that gentleman would be averse. But it is pressed upon us in answer to this, by the gentleman from Orange, why were not women and children, and all other persons taken into this majority, or counted as members having a right of suffrage? We answer that these are exceptions to the general rule, and that the Creator who gave the rule, formed the exceptions to it. He created women with all the tenderness, softness and delicacy of that sex, and when he placed them under the protection of man, he gave them an influence of another kind, more powerful than the right of suffrage; an influence which I have no doubt the gentleman from Orange will acknowledge. If suffrage at the polls had been added, they would have been entirely too powerful. They would have had all the Government in their own hands. And, therefore, I think it would have been difficult to form a society in the present day, like the Amazons the gentleman has mentioned; and I venture to say, that if ever such a society did exist, it did not exist long. It is not necessary to mention, why children are not taken in, or idiots, &c.; these exceptions do not impugn, but they prove the rule. Give a person one vote on his account, and another on account of his wealth, (which is ostensibly the amount of the demand embraced in the amendments under consideration,) and give another person one vote only, because he has not wealth, and it is the same thing as if you would give to the first person one vote only, and the latter none. For, by one of his votes, the rich man could annihilate the one vote of the poor man; and by the other, he could reign over him. It cannot be denied, that if a majority is to rule, a minority cannot; but if wealth is to be represented, a minority will rule, and if a majority of persons ought to rule, then wealth cannot be represented. [According to the standard proposed, the value of a vote will rise and fall from year to year, according to the taxes. If, in one year, the rich man pays twenty dollars tax, and the poorer man only ten, the rich man or his friends on his account, will have two votes, and the poor man only one; and if the taxes should be so lessened that the rich man the next year would have to pay only twenty cents, and the poor man only ten cents, still the rich man would have two votes to the poor man's one; so that the price of a vote would one year be ten dollars, and the next year only ten cents; a great variance in the price of that which ought to be above all price.] This would be throwing the elective franchise of men to the winds of uncertainty, to be driven about as something of no value.

In the scheme proposed, there appears to be no equivalents, no justice. It is the object of all good Governments, to produce the greatest possible good. In doing this, a choice of evils is often presented, that is of two evils, one of which is unavoidable,

to choose the least. Now, it is said, to be an evil, that the poorer man should have an equal voice with the rich man, in laying the taxes of which the rich man has much the larger portion to pay; and this can only be avoided by another evil; and this is, by giving the rich man a decided control in making or passing all the laws, whereby the most valuable immunities of the poor man will be subjected to the will of the rich man. Now, from which of these two evils, is it possible, for the greatest degree of human misery to result? Certainly from that which might fall upon the poorer man in his personal safety and personal liberty, by so much as these are above all equivalents in money; and this proves the impolicy, injustice and total inadmissibility of the scheme proposed. But those who have the wealth, assure that those who have it not, are in no danger; that they will not abuse it. But why is not the virtue of those who have not the wealth, as much to be trusted? They have as much right to this confidence, as the wealthy; especially as the security required of them is so severe. But it is said, that the wealthy can pass no laws affecting the poor, which will not affect them: this is not so, for the cottager now, who is not wealthy enough to own two slaves, must work on the roads, while those who have two slaves, are exempt. They might also be taxed with double duty in the militia, poll taxes, &c. There is a further injustice in it than this. It is only in money bills, that the rich man can be endangered, and these are in proportion generally to other laws passed, as one in fifty: and so to have the control of the one money bill against the poor man, he must have the control of the other forty-nine against him.

In examining any thing which has been advanced by the gentleman from Culpeper, it is with diffidence in my opinion, in perfect unison with that high respect and esteem which is accorded to him by all his fellow-citizens, as well for his own personal worth, as for the manner in which he executes the duties of the office which he fills with his compeers on the highest seat of justice in the State. That gentleman admits, that all men are equal in their natural rights, but says, they are unequal in their political rights. It may then be enquired, at what point does the equality of natural rights end, and the inequality of political rights begin? And of what avail can the equality of natural rights be to a man, if the inequality of political rights may destroy them?

If personal liberty and personal safety, are natural rights, he must have a sufficient share of political power to preserve them; for political rights resolve themselves into the power which every man must have to preserve his natural rights; and it is a contradiction in terms to say, that he could hold his natural rights at the will of another, because that which is held at the will of others is no right at all. The gentleman from Northampton, (Judge Upshur,) denied that there was any inherent right in the majority, derived from nature, to bind the minority in any case. To illustrate this, that gentleman has said, that there was but one single right derived from nature, and that is, the right of all the creatures of God to use their powers in such mode, as may best promote their own happiness. That the lion devours the ox; the ox drives the lamb from the tender grass; and the lamb drives the creatures more timid than itself. This, then, is the right which superior strength gives, and according to this, they who have obtained illegitimate power, may keep it, if they can, and add to it if they are able.

But, perhaps, this was not exactly what the gentleman means; otherwise, we need not hope to adjust the matters in difference between us, as far as power could go. But I know he possesses more liberal sentiments: though we differ materially as to the points on which we should meet so as to agree. Indeed the fascinating strain of that gentleman's eloquence, was such, that I was sometimes astonished to find where it had carried me, by which I was imperceptibly led to substitute the truth of one proposition which could not be denied, as the proof of another which was still to be demonstrated. Most powerfully has the political doctrines which we contend for, been assailed, but I feel them to be a rock which torrents of eloquence cannot move, and we stand in no need of their adventitious aid. Thrice is he armed who hath his quarrel just. Truth is all powerful and must prevail. He has further said that property is one-half the compact in the social compact, and persons the other. Again, that it is not property, but the rights which grow out of it, which is to be represented. The conclusion, forcibly drawn from these propositions, is, that a certain proportion of the suffrage ought to be given to property, which would be so much taken from persons; for just in proportion as you give weight to property in the Government, you lessen that of persons. Now, wealth is defined to be the power, which he who possesses it has to command the labor of others. But the gentleman from Northampton would add to this power, by giving it Legislative power: that would be adding power to power, and according to the state of the case, it would be increasing one of the component parts of the social compact, so much as to destroy the whole equilibrium and proportion. Yes, Sir, wealth is power; and wherever wealth is, there power will exist independent of Legislation. Wealth is the object which keeps the world in motion; it is the supreme object of desire amongst men; they are dispersed every where to seek

it with avidity, and to bow obsequiously before it; the pursuit of it was ardent enough, and the desire strong enough; it was not necessary to increase it; but it would seem by the gentleman's argument, to be exalted to a higher station than it ever possessed before; it is now to be brought even into the Legislative Hall, and set up as an idol to be worshipped. This would, indeed, be an idolatry which would corrupt the true republican faith, and such as we ought to hope and pray would never be introduced here.

But, if I am not much mistaken, this is the first attempt that ever was made in Virginia, formally to give representation to wealth, on the Legislative floor. Take the Bill of Rights and the Constitution together. The Bill of Rights states, that evidence of attachment to, and permanent common interest with the community, shall be sufficient to entitle a man to the right of suffrage; and if he possesses this evidence, he shall be entitled, whether he is rich or poor. And the Constitution only points out one circumstance which shall be evidence of this attachment, &c. That is, that he should be a freeholder. But, surely, it cannot be inferred from this, that there was any intention or design, in the framers of that Constitution, that wealth should be represented. For by that frame of Government, it could not, unless by mere contingency, because the poorest and least populous counties, were entitled to the same number of representatives with the most wealthy and most populous ones.

But I can shew now, that if the end was a good one, which the gentlemen seem to be all aiming at, the means proposed never will accomplish it. So far from it, it will operate directly the reverse. Instead of protecting the rich from the poor, if there is a danger of that kind to be apprehended, it would be increasing the power of the poor against the rich; which I can shew thus. It is proposed, as I understand, by this scheme of representation, according to white population and taxation, to divide the representation throughout the State, in such a manner that an equal number of white people shall send a representative. And then the taxes are to be divided into equal portions according to the number chosen in the mode above mentioned: and an additional representative is to be sent by every district or county, paying one-sixtieth part of the taxes. Now, suppose the State to be divided, by a line running, say from north to south, near the Blue Ridge, so that the white population in each division was exactly equal, and that there were thirty districts or counties in each, each of which would send a member on account of its population. But when we come down to distribute that part of the representation resulting from wealth or taxation it is found that there is so much more wealth in the eastern division, as to entitle it on the whole to double or one half the number of representatives more than the western division. But, suppose in that eastern division, ten of the counties or districts contain all the wealth which has given the whole number of districts or counties in it this increase of representation; and suppose the other twenty counties or districts in the eastern section are poor, possessing no more wealth on an average than the counties or districts in the west; then to protect the wealth of these ten counties in the Legislature, you give each of them one additional representative, but in doing that you give one additional representative to each of the poor counties. Thus while you advance them, or strengthen the rich by tens, you weaken them by twenties. But, suppose we take one of the rich counties whose wealth entitles it to double representation, and suppose in the rich counties, there are one thousand voters, but all the wealth in this rich county, which entitles it to this double representation, is possessed by one hundred of those voters, and the other nine hundred are poor men, of that class whose circumstances are below what might be considered mediocrity; all the men of this rich county may, then, in comparison with other poor counties, be considered as having two votes at the polls, to the voters in the other counties one. So then, to defend these rich men, you give them on the whole, one hundred votes, but in doing so, you give nine hundred to the poor voters, which, according to the gentleman's own hypothesis, must be directly against the rich. And thus, although the system contended for, may not come out in numbers exactly in this way, yet it will operate in a certain degree in that way, so as to increase the evil exactly in the same proportion that the poor do always outnumber the rich in all sections or districts.

There is no way of obtaining the end proposed, so as to give the man who pays the taxes, a voice in laying them exactly in proportion to the amount which he must pay, but by collating him with the tax-books at the polls, or by bringing him there with a certificate, or so marked and stamped, that it may be known for what amount he could be current at the polls: that is, to have it there ascertained, how many each ought to count according to his wealth, say one, two, three, or four. But this the gentlemen will not attempt; it would look too much like aristocracy to be endured in a free country. This, as far as can be learnt from the public journals, was introduced into the French Government. The deputies to the Legislative Assembly, are elected in this way. It was introduced by the ultra-royalists in that country, who seem to resemble those politicians in England, who are called Tories. It is called the double vote, and seems to have created great dissatisfaction among the people there. Those who are called Liberals, with La Fayette at their head, are violently opposed to it. But it is

vain to disguise it, one way or the other. I do not say that the friends of the measure have made use of any disguise; but the project disguises itself, and when stripped of this disguise, its effects will only be, to marshal one part or section of the State, against another, producing sectional and hostile feelings continually. It will be productive of nothing but heart-burnings and jealousies. It would be producing a state of things, in some distant degree, between ourselves, like that which subsisted between this State and Great Britain, while Virginia was a Colony. Great Britain sought to rule the Colony for her own advantage; the Colony submitted with great forbearance, until provoked beyond endurance; Virginia, then, with other States, broke the connection with the mother country forever. I do not say that the State would be severed, but the section which thought itself oppressed, would have such alien feelings towards the other, that we can hardly anticipate what the consequences would be. We, in the unrepresented part of the State, have been seeking a redress of this our grievance, for more than twenty years, and now, when we have, with great difficulty, obtained an audience, the condition upon which it is offered, is worse than the penalty; the remedy is worse than the disease. Our situation is like that of those who asked for bread, and a stone was offered; for a fish, and a serpent was presented. Were the amendment of the gentleman from Culpeper to prevail, viz. that representation should be founded on the combined basis of wealth and population, the news would be answered from the west, with groans of deep disapprobation and discontent, if not with indignation. Those men of that large portion of Virginia, who are now earnestly seeking an amendment to the Constitution, never will accept of this. They would rather endure the ill they have suffered so long, than fly to others, the extent of which can hardly be foreseen. We would, indeed, rather wear the old yoke, which is almost worn out, and must of course fall of itself, before long, than to put our heads into a new one, to be riveted afresh, to last for generations to come. For, in the common course of human events, the present state of things in Virginia, cannot continue long. Public sentiment is on its march: it may have advanced slowly for some time; it never ceases. It is a phalanx, which becomes deeper and stronger as it advances, and will never stop short of its point. The people of Virginia, are not a volatile or fickle people: they are not easily aroused; but when they are, it belongs to such a character not to be stopped until they have obtained their object. They must and will accomplish it, not by physical force, but by moral force. To engraft that provision into the Constitution, would be to leave us where we are. Why should those gentlemen who advocate this amendment, be so tenacious of a state of things, under which Virginia has prospered so little? When a physician has pursued a certain mode of treatment of his patient, for a long time, during which, the patient has uniformly grown worse, he knows, or ought to know, that if he does not change his course, the patient will probably die. So Virginia has been long in a state of decline, during which time she has been strictly confined to a certain course of political regimen, but still she is sinking more and more. Is it not time to change it? Virginia was as fair a portion of the earth, as any under the sun; her soil in its virgin state, was as fertile as was by nature the most fertile, or best cultivated part of Europe: her coast is deeply indented with bays; and her territory intersected far within by the most numerous inlets for commerce, any where to be found in the same space; her multiplied rivers ready to roll down their tribute from the west: her climate congenial to all the most valuable agricultural productions: and Nature there, ready as it were to work for man with both hands, if he would extend but one of his; and yet, with all these natural advantages, she is retrograding from her rank, and other States without half her advantages, are going far ahead of her. Her population in the eastern section is stationary, her fields are deserted, and improvements abandoned. I could weep over her desolations; for I love Virginia. Now, though these things may proceed in part, but they do not proceed altogether from her slave population. For, go to the western part of the State where there are but few slaves, not enough to have any effect or influence on the people, and step over the line, in the adjoining States, in soil and climate of the same kind, and you will find the industry, the wealth, the population, the agriculture, and all the useful arts of life, two to one, in advance of Virginia. If, then, this difference between Virginia and other States, does not proceed from want of natural advantages, and but in part from her slave population, as I have shewn, what else can it proceed from, but a defect in her frame of Government? Let us remedy that, and see if Virginia is not regenerated, disenthralled, redeemed, and whether she will not again advance and regain the station she has lost.

Engraft the scion of genuine Republicanism upon the old stock of Virginian patriotism, and see whether it will not bud and blossom, grow and bear precious fruit, without becoming too luxuriant, as it is feared. But the gentleman from Hanover, and the gentleman from Fauquier, have objected to giving us our due weight in the Government, lest we should construct roads and canals. I need not take notice of the disparaging manner in which those gentlemen, (the gentleman from Hanover at least) have spoken of roads and canals. The gentleman from Hanover, having so little oc-

casion for facilities of this kind, may not, indeed, set that value upon those improvements, which we do, who have many mountains and hills to pass, and rapid rivers to descend to get our produce to market; and therefore, we have been unfortunate enough to speak of those roads and canals to the Legislature, and to ask its aid to make them. Unfortunate I say, indeed, if that is to create an objection against us in obtaining our rights; which rights, whether roads and canals are made or not, must be at all times the same. But lest this should have an undue weight, or any weight at all, by inducing the belief that we are disposed to be unreasonable on the subject, I will first mention the true state of the case.

It was known, that we, as well as the rest of our fellow-citizens, had an interest in a large fund for internal improvement, which was thought, under its original constitution, to be sufficient to afford a benefit to each part of the State. When we sought a part of it in the first instance, we were told that the James river ought to have the benefit of it for the first two or three years, but then we should have it. At the end of that time, we applied again: the same answer was given us; and so from time to time, until we found that the whole fund was swallowed up in the James river, and the credit of the State mortgaged for further improvements. We thought then, that as we had been bound with our other fellow-citizens for the improvement of the James river, that it would not be presuming too much to ask for some assistance, not that we asked the State to become bound for us. And this is the head and front of our offending, which has given so much alarm to those gentlemen. For this we are to be held in political durance; and when we ask to be delivered from it, the answer is no, we are afraid if we give you your due weight, according to numbers, that you will make roads and canals with our money. And when we offer terms equal to giving security for our good behaviour, as to this, we still have the same denial, lest as it might be presumed, we might seek some indemnification for our portion of the fund for internal improvement, which has been taken from us. To give form and substance to the Constitution from such considerations as these, would be to shape that which is to last for many generations, (as we would hope) according to transient circumstances, whereby the distortions of the instrument would remain long after the incidents which produced them, were forgotten or were only remembered in the evil they had produced, and long after these roads or canals were made or abandoned. It would be a curious part of the history of this time, to be told, that the Constitution, then existing, would have been materially different, had it not been, that these internal improvements had been then or previously desired. Now, in conclusion, I would ask this highly respected and venerated body, one such, as with which I never again expect to be associated, not to permit this amendment to pass.

On the conclusion of Mr. Naylor's Speech, the Committee rose, on motion of Mr. Barbour of Culpeper.

On Mr. M'Coy's motion, the Convention determined (41 to 39 votes) to change their hour of meeting from 11 to 10 o'clock.

And then, on Mr. See's motion, the Convention adjourned till Monday morning, 10 o'clock.

MONDAY, NOVEMBER 2, 1829.

The Convention was opened with prayer by the Rt. Rev. R. C. Moore, of the Episcopal Church, and a few minutes after ten o'clock, the President took the Chair.

Mr. Stanard, after a few prefatory remarks on the inconvenience of meeting at this hour, moved that when the Convention shall adjourn, it adjourn to meet to-morrow, at eleven o'clock.

The motion was opposed by Mr. M'Coy, who asked for a further trial of the present course of proceeding. The question being taken, the votes stood, Ayes 37, Noes 37; the President voting in the negative, the motion was lost.

The Convention then passed to the Order of the Day, and went into Committee of the Whole, Mr. Stanard in the Chair.

And the question lying over from Saturday, being on an amendment proposed by Mr. Scott to the amendment offered by Mr. Green to the resolution of the Legislative Committee.

[The original resolution reads thus:

Resolved, That in the apportionment of representation in the House of Delegates, respect shall be had to the free white population *exclusively*.]

The amendment of Mr. Green proposes to strike out the word "exclusively," and insert in lieu thereof, the words "and taxation combined," so as to read, "free white population and taxation combined." And the amendment of Mr. Scott proposes to add, "and in the Senate to white population exclusively:" (the effect of which last

amendment is, in substance, to adopt the mixed basis in the House of Delegates, and the white basis in the Senate.)

Mr. Green expressed his willingness to adopt the amendment of Mr. Scott as a modification of his own, (the effect of which would be to prevent the necessity of taking any distinct vote on Mr. Scott's amendment.)

The Chair decided this course to be contrary to the rules of order of the House of Delegates, (which the Convention have adopted as their own so far as they apply,) which require that after an amendment has been moved and debated, it cannot be modified by the mover, but must, if he wishes to alter it, be altogether withdrawn, and another substituted.

On this decision a debate arose; but as questions of mere order, though often disputed long and warmly, have usually more interest *in* the House than *out* of it, we are not in the habit of presenting more of them to our readers than the leading points. The leading point in this case was, that if the amendment of Mr. Scott was suffered to be united to that of Mr. Green, gentlemen who could not approve of both, might appear as if voting against the white basis in the Senate, while their vote was directed against the mixed basis in the House of Delegates. An appeal was even taken by Mr. Doddridge from the decision of the Chair, but subsequently withdrawn. Mr. Green also withdrew his motion to unite the two; and the question being as at first on the amendment of Mr. Scott only,

Mr. J. S. BARBOUR said, that he was gratified to find that by the amendment of his honorable colleague (Mr. Scott) the controversy could no longer be said to be one for power; but that it now resolved itself into a question of protection. In reaching his own conclusions on this subject, he had looked mainly to the preservation of certain great interests in the State, and he was anxious to take that course which would effectually defend them against encroachment. The end in view was one indissolubly bound up with the harmony and the liberties of the people, and the means should be adequate to the end. Power and protection seemed to him to be more closely allied than gentlemen had admitted. They are correlatives, necessary to the objects of civil society, and cannot be separated. Mr. B. said, it appeared to him that much of the vice which pervaded the arguments on the other side, might properly be traced to the misapprehension of the conservative principle of our political institutions.

Gentlemen had argued the question, as if the will of the majority should be the only rule of action. It was certainly entitled to great weight, and would always exert great influence. But it is not the only consideration which merits enquiry. The great safeguard in a Republican Government is, in my view, to be found in limitations of power; whether that power be vested in the many or the few. Responsibility cannot be disregarded in the public functionary without destruction to popular rights, and yet, in a society made up of numerous and diversified interests, this principle of responsibility would often fall short of compassing the objects of justice. For, if a majority of these interests be united in one common bond, the rights of a minority, having dissimilar interests, must be insecure. I have thought, said Mr. B. that there were two important securities necessary in our representative system. The first, to secure the fidelity of the representative to the constituent body; the second, to guard one part of the community against the injustice of the other. Without these, justice will be overthrown, and liberty cannot long survive the downfall of justice. The first of these securities we possess in the frequency of elections; to the other we have not given sufficient attention. No form of Government has ever subsisted, in which this principle of responsibility was not at times seen and felt. Even in the most frightful despotisms, it has often exerted a powerful dominion. The great struggles which have occurred between liberty and power, in the old as well as the new world, have almost invariably terminated by imposing further limitations upon power. If limitation upon power be unnecessary, and if the will of the majority is to be alone looked to, why is it that we have Constitutions at all? In all the contests in England, from 1628, when that act of Parliament passed, which is denominated the Petition of Right, to the Revolution of 1688, the first purpose seems to have been, to impose new checks, and additional restraints, upon those hands that wielded the sovereignty. If men were Angels; if justice and magnanimity were, at all times, to exert an uncontrolled sway; there would be no need of any Government upon earth. It is because we are not so constituted, that Governments are instituted; and political institution is unwisely constructed, if it be not so armed, and so restricted too, as to ensure its rightful, and restrain its injurious action. It is not a novel doctrine, that majorities, actuated by common interests, will unjustly encroach on the minority. We have at this moment a strong illustration of it, in the operation of those laws of the Federal Government, known by the name of Tariff Acts. Responsibility of the representative to the constituent body, is the direct cause of these oppressive encroachments, upon the suffering interests of the Southern States. The evil here, is not in the Government, but in the community; a community, united by interest, and acting under its influence, disregarding the obligations of justice, and

preying upon the minor portion of that community. The principle is identical with that we are now discussing.

To shew that these unequal interests exist in the scale of contribution, gentlemen, agreeing with me in sentiment, have offered numerous calculations to our view, and it will be worse than idle for me to repeat them. That great disparity exists in the condition and the relations of this Commonwealth, must be apparent to all. Prudence, duty and safety, call upon us to lay along side this striking disparity, this exposed interest, a strong principle of protection. I look, said he, to the means of prevention, and these can only be obtained in representative power. We are, however, gravely told upon the other side, that we need no protection; that our fears, are the creatures of fancy; that justice, honour and magnanimity, will be the efficient guardians of our welfare. I make a just estimate of the virtues and integrity of gentlemen opposed to me, when I declare, in perfect sincerity, that I would confide to them as much as I could to any men whatever. But I confide to no man, that which it may become his interest to abuse; that which it is his interest to violate. When gentlemen tell me that my fears are idle figments of the imagination, I put in opposition to such suggestions, facts, experience, that which is known to me from personal knowledge. Let me ask the honorable member from Brooke (Mr. Doddridge) if he did not openly avow in 1823, the propriety of basing representation from this State to Congress, upon white population exclusively? And did he not refrain from moving it, only because he knew that it would be put down at that time, by force of numbers in the Legislature? With this fact staring me in the face, can gentlemen ask me to yield this protection for the eleventh part of our representative influence in the General Government? And to give up this representative power, as a mere gratuity to those who give nothing for it, and to which we are entitled only in consequence of our slave population. I do not blame gentlemen for entertaining or advocating such opinions, but they must pardon me for taking precaution against such schemes whenever they may be set on foot. Nor does this diversity of interest, with its correspondent influence, pervade one region of the State more than another. I have lived long enough, Mr. Chairman, to witness its operation in the General Assembly upon the East, as well as the West. Give me leave, Sir, to remind you of an instance occurring whilst we were both of us members of the House of Delegates. There was a time during the late war, in which the progress of events was well calculated to arouse and animate the patriotism of the whole land. It did arouse and excite it. The Capital of the country had fallen. The arrogant and insulting terms of the enemy had been promulgated at Ghent; and we had received an official communication from the Commander of the hostile fleets in our waters, that he would lay waste every assailable point. The indignation of the General Assembly was kindled into flame, and its feelings were expressed in the unanimous vote of the Legislative body. Yet, at that very moment, and under the influence of these exciting causes, both the East and the West, demonstrated the powerful and controlling sway of dissimilar interests and local apprehensions. I allude to the vote given on the passage of the bill, then denominated the "Defence Bill." With all the patriotism, chivalry and gallant devotion, which they possessed and had displayed in an eminent degree during the war, yet few, very few western members went along with us in support of that measure. The reason is obvious. They were remote from the theatre of danger, and could not have that community of feeling and sense of necessity, that pressed upon others not so situated. When the discussions occurred in the Senate, let me enquire of the honorable member from Augusta, (Mr. Johnson,) if he did not witness the influence of the same cause in its effects upon the debates of the Senate. The operation of the bill would have been to withdraw portions of the local militia from the tide-water country generally, and to concentrate military power, upon points more peculiarly exposed, and presenting stronger temptations to the incursions of the foe. Does he not remember the violent opposition that he encountered, in sustaining that measure, from the Senators from Lancaster and Mathews? I have mentioned these facts, for the single purpose of shewing that in times peculiarly calling for union of hearts and councils; for forbearance and oblivion of feuds; that local interests have exerted their influence upon men, high-minded, and elevated in honour, principle and patriotism. Sir, we are also told, that a sufficient and adequate guarantee will be given to us. No other guarantee, but representative power can be sufficient or adequate. The history of the world shews that in all contests between virtue and interest, the latter has finally prevailed. I wish to make them allies, not antagonists; for in the union of interest and virtue, have you the only safe pledge for happiness, for justice and liberty. But, what is this guarantee? Why, an article in the Constitution? And who is to tell us what that article means? How far it is to operate, and when it is to cease? Who is to construe it? Why, Sir, the majority; and it cannot be necessary for me to say, that wherever you deposit this power of construing, this right of interpreting its meaning, there do you also deposit a sovereign power over it. Then, the amount of this guarantee resolves itself at last into the will of the majority, who may make

it mean what they please, or strike it out altogether at pleasure. And this brings me back to the enquiry, how far it is safe to trust even a majority with a power to oppress a minority, when united with temptations and inducements to abuse. It is said, that this defence of the interest of minorities is novel doctrine, incompatible with republican principles. Sir, there is no incompatibility between justice and republicanism; they can't exist apart. If I am to be oppressed, deprived of my rights or property by force, of what moment to me is it, whether that be the force and injustice of the many or the few? If an honorable member over the way, (Mr. Randolph, will pardon me the use of a figure of his, I will say, that I go for the interest of the Stockholders against that of the President, Directors and Cashiers of this thing called Government. I am for guarding the Stockholder's interest, even if the Presidents, Cashiers and Directors be multiplied into the more numerous body. I have high authority to answer the intimation that this is novel doctrine. I hope to be forgiven by a venerable gentleman on this floor for using it. In the Virginia Convention, Mr. Madison said:

"But on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and contentions, which, in republics, have more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the sources of the diversity of sentiments which pervades its inhabitants, we shall find great danger to fear, that the same causes may terminate here, in the same fatal effects, which they produced in those republics.

The principle of numbers is strenuously urged upon us. Where do they get this principle? Not in Governments or societies started like us. Where the wants, the necessities, and the contributions of the people were similar, if they acted alike upon every part, then the principle of numbers would be just, and representative responsibility, a sufficient safe-guard against unjust encroachment. Numbers are looked to, because numbers indicate the ability of society, to pay its contributions. But what numbers? For taxation, you take the whole numbers of population, with out regard to age, sex, condition or colour. The reason is apparent. Taxes are defined, by writers on political economy, to be contributions from the land and labor of the country, placed at the disposal of the Government. Contributions are made, and so levied upon the whole labor of the country; and if the principle of numbers is to be adhered to, the same reason that is assigned for the imposition of taxes, would justify representation. But to this, I should be unwilling, I discard the principle of numbers altogether, and recur to that of taxation.

In recurring to the question of taxation and representation as inseparable correlatives, we cannot avoid looking to the obligations of the Government, to protect property as well as persons. This principle is not only derived to us, from that country from which we have drawn most of our opinions of civil and religious liberty, but it is the foundation of that revolution, which made these States free and independent. From 1625 to 1688, it was the moving impulse to the great events then occurring in England, and which tended in a high degree, to secure the freedom of that country, and to inculcate here the genuine doctrines of civil and religious liberty. The Petition of Right, in Old England, did not only aim at enforcing the act against the exaction of arbitrary benevolences, but to prevent the imposition of any other tax, loan, or such charge, without common consent in Parliament given. And to curtail the prerogative of the Crown, to cut up its *minera regna*, there was an express prohibition against the power of imprisonment. The Petition of Right is known to be the product of Lord Coke's pen, who had a just right to say, that he had won all the honors of his distinguished life, "without prayers and without pence;" he courted nor flattered neither Church nor State. This important act of Parliament, conceded to the subjects of the Crown the right of taxing themselves, and a perfect security of person and property. There is nothing great and glorious in the history of England, that is not in some way associated with their indissoluble union of taxation and representation. The *Habeas Corpus* came from this context, as the shield of the subject against the arbitrary power of the Crown. Nor do I hazard any thing of error in the assertion, that these conservative principles of liberty and law, were laid in the blood of that monarch, whose head the people brought to the block, as an appropriate sacrifice for the liberties of England. Principles, for which Hampden lost his life in Chalgrove-field, and in support of which, Russell and Sidney died upon the scaffold. I am unwilling, (said Mr. Barbour,) to surrender the principles of Locke, and of Milton, for the fancies of Rousseau, are, as unwilling as I am to disregard the lights of our own revolution for the *ignis fatuus* of French politics and French irreligion, or rather for the delusions of anarchy and atheism. The American revolution is the fruit of the effort in the parent Legislature, to seize by taxation the property of the Colonies, without their free and common consent in making the gift and grant. The offer was

made that representation be allowed the Colonies, but it was rejected, because such representation must be nominal only.

The sturdy Patriots and able Statesmen of that day, knew the inefficacy of such representation. They pointed to the instance of Scotland, and insisted that representation *in form, only*, was but an apology for greater plunder and more oppressive exaction. If we turn our attention to the Constitution of the United States, the same principle for which we contend, is therein engrafted. Direct taxes and representation in the popular branch of the Legislative Department, are locked together. If power is wanted, it is to be had upon condition, that it bear the expenses of the social and Federal system. Pay the taxes, and you have the representatives. With representation, power passes also, but the shadow must not and cannot quit its substance. My views are directed by practical utility, and not by speculative philosophy. In looking through the Debates of the State Conventions, that ratified the Federal Constitution, I perceive that the men of those days, recognized the principles for which I contend, and acted on them. In New-York and Massachusetts, Mr. Jones, Mr. Smith, Mr. Hamilton and Mr. R. King, and Mr. Samuel Adams, all contended, "that taxation and representation, should go hand in hand, and that it was the language of all America." Notwithstanding the lights of our own revolution, and those reflected by the lamp of history, we are now to disregard all, and to pursue a path as yet untrodden, either by prudence or success. And why, Mr. Chairman, let me ask? Because petitions, it is said, have poured in for reform. I venture to predict, that the people never dreamed of this sort of reform. Reform, which is to make one man's property the property of another, without the owner's consent, and in the end to enslave his person, by first stripping him of his property. When the gentleman from Brooke, spoke of the annual petitions from the counties of Henry and of Patrick, praying the call of a Convention, I was reminded of another sort of petition, that I have sometimes seen from those counties, and the county of Franklin. I knew well the character of the Delegates usually sent here by those people. Cautious, intelligent and patriotic, they sought reform for the protection of property, and the security of personal rights and equality. And the very men who held in one hand the petition for a Convention, brought in the other another petition to diminish disbursements of public treasure and to retrench expenses. They were plain men, but they had the sagacity to discern, as Mr. Dunning did, in maintaining his celebrated resolution, "that the power of the Crown had increased, was increasing, and ought to be diminished;" that reform was nothing without retrenchment and economy. I know well that those people looked to the diminution of expenditure and to lightening the burden of taxation. Had they imagined that all this thing of Convention and reform was to resolve itself into a grant of power to take their money *ad libitum* and *ad indefinitum*, they would have done as we did in Culpeper: they would have come to the "*right about.*" For, if I were to select sentinels to guard the purse of the State, I would as soon take them from that quarter of Virginia, as from any other; I should give full confidence to their vigilance, fidelity, intelligence and honesty. I well remember, some years since, that one of the gentlemen from that quarter, had even the name of the watch-dog of the Treasury. And I speak it with all due respect and with sincere commendation, that such representatives often make the best and most useful public servants. Gentlemen deceive themselves in supposing that the people are prepared to throw down the guards of prudence and self-love which usually defend their property from encroachment. They will be guided by experience, rather than follow the lights of the French Revolution. Lights that shone for a time upon the path of despotism, and were finally extinguished in blood, &c. &c. &c.

Mr. GORDON (of Albemarle) now rose and said:

That it would be presumptuous in him, to attempt to say any thing calculated to guide the Committee to correct decisions on the important subjects on which they were called to deliberate: That he had, however, some opinions and facts, which he felt it his duty to submit to the consideration of the Committee, that they might, at least, be enabled to judge, by comparing his views and theirs, how much he might be in error, or that he might derive light from the great ability which distinguished this Assembly.

The course of the debate had seemed to him, somewhat beside the question: most of the arguments in favour of the amendment, proposed by the gentleman from Culpeper, (Mr. Green,) had gone the full length in opposition to all reform whatever; and it would seem to a by-stander, that the gentlemen had not been called on to recommend amendments to the existing form of Government, but to determine whether there should be a Convention called or not. That question had been already decided. A majority of the freeholders of Virginia, after years of deliberation, had determined that a Convention should be called for the purpose of proposing amendments to the existing Constitution. Public opinion, said Mr. G., cannot be misunderstood on that subject; unless, indeed, the ingenuity of gentlemen, shall be able to make the people,

(as has been said,) come to the right about; and persuade us, their representatives, to disregard the purposes for which we were sent here. Are there, in reality, any inequalities in the existing Constitution of Virginia, which need reform? To me, Sir, it seems evident that there are, and inequalities so great, that they cannot longer be borne with. They must be corrected, not, Sir, by force and violence, but by the mild operation of public opinion, acting through its appropriate representation on this floor. A reform is due to the character of Virginia before the American public.

But, Sir, an attempt is now made, in the modification of this Constitution, to infuse into it a new principle, unheard of till now, (so far, at least, as my knowledge extends,) in any free Government; a principle which is at war with every notion we, as Americans, have been taught to hold sacred, and which goes to make the elective power quadrate with *wealth*. The design is, in effect, either to make slaves constituents to the Legislature, or to make the tax paid on them an ingredient in Legislative power. To both these propositions, I have strong objections. Sir, the plan will be utterly unavailing to the object its advocates seek to accomplish by it. If the consequences which are to flow from granting us an equality of rights, are really such as they apprehend, this scheme will never operate to prevent the evil.

The gentlemen on the other side have discussed this question, as if the injury so much dreaded from equal rights of representation, and an extension of the right of suffrage, was to be confined, in its extent, to one peculiar part of Virginia alone. If the white basis is adopted, the most grievous oppression must, they think, ensue to that part of the Commonwealth, and nothing can save the interests of the majority of the wealth of the State from the danger of misrule, when the power shall go into the hands of a minority possessing little wealth or influence. But, Sir, what are the facts of the case? For it is not my purpose, even if I had the ability which some other gentlemen so conspicuously display, to indulge in beautiful speculation on mere abstract theories, or in the brilliancy of illustration by classical allusions to history. My view of this subject shall be altogether practical. I purpose to enquire how Virginia can be rendered most happy and prosperous? And what effect is likely to ensue, from the proposed alterations in our Constitution?

The State of Virginia contains one hundred and five counties and four boroughs, having representation. These counties are very various in their dimensions, in the comparative fertility of their soil, as well as in the character of their respective population. The variety in these respects, is very great indeed. Some of these counties, have more people than, by the present system, are fairly represented in the Legislature; and have this redundancy on any theory gentlemen may be pleased to adopt, whether we go on the white basis exclusively, or on the compound basis of population and taxation, or even on the plan of giving representation to all the blacks. Nor is it a fact that these diversities and discrepancies are scattered about the State, here and there only, at wide distances apart: but, on the contrary, large portions of the State, and numerous counties lying contiguous to each other, present a spectacle of these great and striking inequalities. The question is, whether we shall, soberly and calmly, set ourselves to remedy such a state of things; or whether we shall press a subject that is calculated to distress us all, and practically to divide us in feeling, by first teaching us that we are divided in interest: the result of which can only be to bring us to a conclusion, which all true friends of Virginia cannot but deprecate, and which I hope never to see.

Do gentlemen ask us for facts? Sir, I state this as a fact, for the truth of which I appeal to the documents furnished us from the Auditor's office. From the head of tide-water, (leaving out the counties of Spotsylvania, Caroline, Hanover, the county of my friend, Mr. Morris, and the one which gave the first impulse to the revolution; Henrico, Chesterfield and the City of Richmond,) what is the amount of population and taxation as far west as the Blue Ridge? This region contains a large proportion of the white population of the State: it wants but little of containing a majority of the whole number of slaves: it pays a share of the revenue greatly disproportionate to its present representation; and, if taken in connexion with the limestone valley, (which I consider as appertaining to the eastern portion of the State, in all essential interests,) the two together, by the Census of 1820, containing a majority of the *total white* population; a majority also of the *slaves*; and a majority of the *taxation* likewise, by a balance of \$17,000. Well, Sir, what is the representation enjoyed by that portion of the State on this floor? The fourteen counties of the Valley have twenty-eight members. The region from the head of tide to the Blue Ridge, have twenty-nine counties and fifty-eight members, making in all eighty-six. Thus, Sir, we see that in a House containing two hundred and fourteen Delegates, a region of the State comprising a majority of whites, blacks, and taxation, is represented but by eighty-six members; leaving thus a majority of thirty-eight members in the Legislature, actually *against* a majority of the whole population and the whole taxation of the State. Gentlemen ask for facts; here they are. I do not discuss the sectional interests of these relative portions of the State: Would to God that I could consider

the interest of them all as one and the same : but these views forced themselves on my mind in consequence of the course pursued on the other side.

Nor is this all : the gross inequalities present themselves to our view in that part of the State, which extends from the head of tide to the ocean : inequalities glaring indeed, when the two parts of the State are compared together. The Senatorial District of which Richmond forms a part, and one other, have in the House of Delegates, exclusive of Richmond, twenty-nine, and inclusive of Richmond, thirty Delegates. Thus, while five counties, at the foot of the Ridge, paying a tax of \$37,835, have ten Delegates, these two Senatorial Districts have twenty-nine Delegates, and pay a tax of \$52,450 only ; that being the actual amount of taxation paid by the counties ; Richmond, which pays \$18,075, being withdrawn.

Sir, I do not say, that the country below tide-water, (God bless the country below tide-water, and all Virginia !) does not pay its full proportion of taxes ; but I ask whether the very able opposition on this floor, had not better unite with us, in devising and perfecting a feasible plan for the amendment of the Constitution, than obstinately to defeat every plan that can be proposed.

Sir, I have made other calculations, from which it will appear, that the representation in the extreme west of Virginia is redundant ; that that in the extreme east, is also redundant ; and that while both these parts of the State will, if the basis of white population shall be adopted, *lose* a portion of their representation, the middle region of the State, which lies between them, will *gain* as much as they lose. The strength will thus be carried to the centre, and if we suffer death, it will be from a disease of the heart, for which there is no remedy.

Agreeably to the Census of 1820, the whole white population of the State was 603,81 whites ; 425,148 slaves, and the whole taxes in the year 1828, was \$423,563.

The people west of the Alleghany mountains were 133,112 whites, 13,306 slaves, and they pay \$30,099 in taxes. They have at present twenty-six counties and fifty-two Delegates ; but, on the basis of representation by white numbers, they would have forty-seven only, *five less than they have at present*.

The Valley between the Alleghany and the Blue Ridge, had a white population of 121,036, and 29,785 slaves : they pay \$65,537 taxes ; they have fourteen counties and twenty-eight Delegates. If equalized, they would have forty-two. There are in the region of the State above the head of tide-water to the Blue Ridge, 187,186 whites, and 205,500 slaves ; and it pays \$164,170 tax. They have twenty-nine counties and fifty-eight Delegates, and are entitled to sixty-six Delegates, *eight more than at present*. The country below the head of tide-water had 161,687 whites, 176,496 slaves, and pays \$157,756 in taxes ; they have thirty-six counties and four boroughs, and seventy-six Delegates. They are entitled to fifty-seven only, *making a difference of nineteen*.

I have made other calculations, which go to shew, that there is no material difference, in the result, between basing the representation on Federal numbers, and on a compound ratio of population and taxation. There will be not more than a difference of two Representatives in a House of Delegates containing one hundred and twenty members.

Now, Sir, I ask if it be wise to equalize the representation of the State on *any* principle ? If it be, then I deny that there is any other principle on which it can be fairly done, but on a majority of the free white inhabitants.

Property, Sir, in any just scheme of representation, is not to be regarded but as claiming the protection of the society. It is in aristocracy, that the argument is urged which insists on giving it political power as possessed by *individuals*. When you admit that, you make a *House of Lords* ; you give the rich man a power which he could not claim in the Government without the influence of his wealth. But, gentlemen propose to give this influence to property, not as property in the hands of individuals, but as lying in certain sections and subdivisions of the State ; and does this better the matter ? Not in principle, for the principle remains the same ; not in practice, for there its only effect can be (and is) to produce heart-burnings and jealousies of section against section, which is even worse than of man against man. Because one part of the State has fewer slaves than the residue, will you make your basis of representation rest upon that sort of property, of all others, the most objectionable ? What must be the effect of such a policy ? It must, it will produce discontent every where, save only among the slave-holders themselves.

Sir, I thought it unwise, and I feel that it is most unpleasant, to bring this subject into the discussion. I tried to prevent it last winter in the Legislature : but it is forced upon us, and we must meet it : the gentlemen will not let us avoid it.

I ask, what good would it do to Virginia, were we to admit representation on the basis of the whole black population ? Gentlemen argue as if the whole of the eastern part of Virginia consisted solely of slave-holders ; but so far from this being the case, I think it possible, and very probable, that there is, even in that portion of the State, a majority who are not slave-holders. If that be the fact, or any thing near

the fact, do they not see that, adopt what numerical basis you please, the prevailing, moral influence of the State must be against this class of persons and the sort of property they hold? And if power is given to the slave-holders with a view to protect their slave property, will not the non-slave-holding portion of the community feel it their interest to make the slaves pay for their own protection? Will not the non-slave-holders in east Virginia immediately have a common feeling with those in western Virginia? Sir, whatever may be the natural passions of men, one thing is very certain, that there is no very peculiar sympathy between non-slave-holders and slaves. They will utterly oppose a principle which confers on this species of property any political power in the practical Government of Virginia.

Sir, my own portion of the country has a very deep interest in this matter; and I am as anxious as any one can be, to have their interest secured, and their apprehensions quieted; but I would effect this in a very different mode from that suggested by some of the very able and honourable men with whom, in time past, it has been my pride to act. Sir, do you not perceive, that if property be your basis, you *cannot* extend the right of suffrage? Do not gentlemen see, that an extended right of suffrage is the circle which includes all these powers? Do they not perceive, that in imparting power to make laws and to vote for representatives, if they extend that power beyond the freeholders, they instantly get up an interest in the State which is hostile to the very foundation of their scheme, and hostile to any Government that shall be founded upon it? Sir, this is not an interest to be laughed at and despised. Shall we not still be assailed year after year, with petitions from the north to ameliorate the condition of the slave population? That interference we may well despise: but if we get up this spirit at home, among our own people, and your State shall be sundered and severed in affection by those mountains, what I once looked to, as to the barriers of her strength and safety: Sir, I say, if they get up this spirit on the other side of those mountains, will it not come over? Aye, and spread too, among all that portion of the community who are not slave-holders? If you extend the right of suffrage, will not persons thus discontented and thus made inimical to the slave-holding interest, vote for the man who will lay the highest tax upon slaves? How do you now retain that description of property in perfect safety? I answer, by the power of the society itself. Yes, by that composed, silent, but tremendous power, which resides in the free white population of the State: that power which defends all, and without noise, or apparent effort, keeps all things still in Virginia: and if you adopt any other foundation of power, than the white people of the State, will not jealousies and excitement exist towards that species of property which you thus endeavour to protect, in all those who are not its owners?

If you do not extend the right of suffrage, most painful discontent will ensue, and if you do extend it, you put it into the power of those who exercise suffrage, and who are not slave-owners to oppress that property the more relentlessly because a peculiar power is claimed for it in the Government, and when, in truth, its guardianship springs in a degree from the very numbers whose political power is diminished, by making that property or taxes from it an ingredient in the representative power of the State. One would think, that in a free State, each man would have protected along with his person, such property as his genius, talents, or industry might have obtained for him: but this slave property is like having the wolf "by the ear; you do not know whether to hold him fast or to let him go." It is a stumbling block in our way: it balks us in all our deliberations, and we seem almost at a stand, whether we shall adhere or not, to the principles of freedom and equal rights, for which our fathers bled.

I ask whether there is any thing in this doctrine of a compound basis of representation, like those doctrines of freedom for which Virginia has always contended? I will not go for examples to English history: my recollection of it, is too general to enable me to go into its particular detail. But I will go to the free Constitutions of our own happy country, and I ask whether there is any thing in this principle calculated to aid the reputation ever enjoyed by this ancient Commonwealth, for her zealous attachment to the true principles of Constitutional liberty?

Gentlemen have perplexed themselves with abstract disquisitions on the rights of majorities, and they point us to instances, where, in the Federal and other Constitutions, the majority is excluded from a controlling power: these instances we well knew and remembered; but they are only exceptions, and exceptions do but confirm the general rule to which they apply: yet gentlemen would make these cases of particular exception, to give the principle on which to lay the foundations of our Constitution: Sir, what would this be but, in the language of an eloquent man, "to make the medicine of the State, its daily food?"

The veto of the President; the provision requiring majorities of two-thirds of the Legislature, and others of the like kind are relied on, as proof that we are not to look to a majority of the people for an expression of the public will, but must get a will

made up of slavery and freedom, of money and free will: and this is to be *our* protection.

I had hoped, gentlemen would have reserved this proposition for a mixed basis, till we came in regular course to consider the subject of representation in the Senate.

The Senate, it seems, must be held as a check on the lower House: it is not to be itself a moving active body, but is to serve as a curb upon the enthusiasm of the other branch of the Legislature. But little did I expect that it was to be proposed to us, to make the first branch of our Legislature, unlike any other in the Union, unless it be where one of the slave-holding States have copied the Federal ratio of three-fifths of the black population. But there is no analogy between the case which gave birth to that ratio, and the case now before us. That was a treaty of one sovereignty with another. A Constitution was then being constructed, which was to combine different and totally distinct societies under one general Government, for their common benefit. It was a Government of limited powers, the residue of power being retained by those sovereignties as such. It is said, that able statesmen have doubted the wisdom of that provision in the Federal Constitution; and I myself shall regret it, if it be made a precedent, to infuse an aristocratic ingredient into our State Constitutions. The structure of the Senate of the United States, where States large and small have equal representation, is brought forward as furnishing a proof, that a majority of numbers does not, in fact, rule in this Republic. But the reason of the equality of representation, while numbers were so unequal, is manifest; the Delegates on that floor do not represent numbers at all; they have nothing to do with numbers; they represent sovereignties; and the sovereignty of a State, does not depend on its dimensions.

Gentlemen have denied the right of the majority to rule in part from the practical difficulties in applying the rule; and they have pointed us to the minorities in the Districts, as often being, if united, sufficient to contradict the vote obtained, by admitting a mere plurality to decide an election. Admitting this to be so, it does not reach the point: for I have not said either that the voice of the majority does always in practice prevail, nor that the majority always does what is right; but I ask gentlemen to point out a safer depository for the ruling power.

Allusions have been made to some of the Governments of antiquity, and to that of England, as supporting the opposite view. But, Sir, what is this Government of England, to which gentlemen so confidently appeal? Has it not at length become (notwithstanding the original freedom of its Constitution) little else than a military despotism? The people, it is true, submit; but take the arms out of the hands of the soldiery, and how long would that submission last? I suspect they would soon find out a very summary mode of paying their national debt. But the raw head and bloody bones of the French revolution is ever and anon made to pass before us, and we are reminded, as soon as we propose the least approach toward a greater equalization of rights, of the political and moral earthquake that shook that ancient empire to its foundations. Sir, I think there may be drawn from that very revolution a salutary lesson on our side of the question. The evils of that great convulsion did not grow out of the misrule of the *majority* alone, but out of the resistance of a minority. They refused to submit to the principle for which we contend, and rejected the concessions offered them by the mild spirit of their King; and it is not to be wondered at, that, in the issue, the will of the majority should prevail. It is very true that there succeeded a more settled state of things under Bonaparte; but though the country was to appearance quiet, it was not the calm of contentment, but of coerced submission; the spirit of liberty was still throbbing in French veins; and the issue has been, that after desolating all Europe, and laying waste in its course almost all the Kingdoms of the Old World, this very French revolution has terminated in advancing the rights of man. It has given to France a more limited monarchy; a free press, a representative chamber, and the trial by jury.

But, Sir, have we any proud and haughty nobility, for whose pleasure the yeomanry are to be taxed at will? A fat and indolent privileged order, who roll in luxury at the cost of the laboring classes of the community? No, Sir. There are none who propose such a thing. What then has the French revolution to do with a case no way analogous to that of France?

Various other topics have been introduced into the discussion, which, in my apprehension, have no legitimate connexion with it; (but I do not pretend to judge for others, or to cast the least censure on them.) And among others the subject of internal improvement has been conjured up; (I should not say *conjured* up, for it sprang up in our way.) And gentlemen oppose the white basis of representation on the ground that if it be adopted, the lower country will be heavily taxed for objects they do not approve, and the entire benefit of which will be enjoyed by the west. That this subject is known to be a favorite one among gentlemen who reside in that part of the State. But, I ask, was that attempt at internal improvement which has been made, a western project? Its advocates and the engineers, I own, deluded me when I first entered the Legislature; they told us we could unite the eastern and western parts of the

State at a small expense, and I reflected that we had a fund provided expressly for objects of that character, and the basis of which was wisely laid in the principle, that individual enterprize was first to be called out, and then aided by the hand of the Government. But, Sir, by whom was that wise restriction on the application of this fund ruptured? Was it by gentlemen from the west? Or was it not by what is familiarly denominated the James River interest? Was it not they who told us that the object was one of such vast importance, that it ought to be made an exception from the rule, and that a sum ought to be raised for that object expressly, without reference to the peculiar constitution of that fund? I am casting no injurious imputations upon the gentlemen: God forbid! I know they were all honorable and high-minded men, who were sincerely pursuing what they considered the best means of improving the State.

But what has this question of internal improvement to do with the question of a white or a compound basis for representation? Nothing at all, Sir: Yet, they themselves have introduced it, and I must be suffered to go a little into it, by way of reply. The gentlemen got little by their scheme: all the money, I believe, has been sunk in James River. They made large loans to effect it, and now those loans have to be re-paid, the country has come to a halt. The system of internal improvement cannot move a peg. I know that the distinguished Convention held at Charlottesville was got up with a view to revive the interest of the subject in the public mind; and what has been the result? I believe the gentlemen must own that it has been any thing else, rather than a revival of the public confidence in behalf of internal improvement. Unless these projects are carried on elsewhere in a very different manner from what they have been here, they will ever result in mere jobs, wherever the public or the Government have any concern in them. The meeting at Charlottesville has produced but very little effect in favor of the subject, very little indeed, Sir; inasmuch that you cannot, at this day, get the people of Virginia to consent to be taxed for works of internal improvement any where, be it east or west, north or south. Freeholders or non-freeholders; all reject the proposition. The only way in which they can advance one step is by loans, and that mode I shall ever hereafter oppose.

My friend from Hanover (Mr. Morris), when the gigantic scheme was first presented to incorporate a Joint Stock Company, in which Virginia and other States were parties with individuals and the United States to make the Chesapeake and Ohio canal, supported it with great effect against my friend from Norfolk Borough (Mr. Loyall) and myself. Yet, notwithstanding this, such was the anxiety of the Virginia Legislature not to connect the improvement of the State with Federal authority, that the bill did not pass until a provision was made attempting to limit the Federal power, within the boundary of the District of Columbia, as to its subscription.

Reference had been made to an application to the Legislature, for certain improvements in the Shenandoah: but what argument could be drawn from a mere application, which was never granted, he could not perceive.

My friend from Orange (Mr. P. P. Barbour), for whose talents and character, I entertain the most exalted regard, has informed us, that he is against mere *experiments*, and in favor of experience alone: and so am I against experiments, when they are of a wild and visionary character. But we must not forget, that it is from experiment alone, that experience is obtained: and that the most valuable institutions of the country, that our whole free Government itself is but the result of an experiment, which has happily succeeded, and has, as I firmly trust, converted this land into the abode of freemen, to endless ages. Yet, the very same arguments might have been urged against that experiment, as are urged now against this. It was a fearful conflict we engaged in, against the greatest nation in the world: the first in arts, and arms, and liberal science, and all that can ennoble or adorn the name of man. That was a fearful experiment: and the heart of the firmest man might well pause, if not tremble, at adopting it. But, Sir, is there any thing fearful in the little experiment we are now going to make? Almost all the States have re-modelled their Constitutions: and has any violence or public calamity ensued? I have heard of none. In the old world, indeed, you cannot take up at pleasure the foundations of your Government, and improve its form. Why? Because the principles of aristocracy and monarchy, are there infused throughout the whole system. A hundred ranks of dependent officers, are interested in upholding the existing abuses, and keeping down the people: and if the people obtain a mitigation of their evils, they must rise in their might, like the strong man, and tear down the temple which has become their prison. But, does an argument from that state of things, apply here, where we inhabit a free State, and are surrounded by twenty-three other States, equally free? Are arguments of this sort to appal us? Is there any demoniacal spirit gone abroad in the Commonwealth, so that there is nothing like justice or faith among men? Suspicion, it seems, is to be the order of the day: and jealousy the only safe foundation for a civil community. Sir, men do not associate in communities, because they *suspect*, but because they *love* each other: because society is necessary to the heart, and man

is a savage without it. It is only when society has long been established, that the spirit of selfishness makes man a misanthrope, and persuades him to deny, that true "self-love and social, are the same." No, Sir. All the suspicion we ought to cherish, in laying the foundations of our new Constitution, is such as will teach us to be very jealous, lest so much as a grain of aristocracy or monarchy, should any where be found in it. Let us have no Nobles, no Kings; but give us, and our children, the equal rights of men.

Sir, if we shall fail in agreeing to any amendment to the Constitution, and shall return to those who sent us here, with nothing in our hands, what must be the consequence? Discontent, division, public confusion. Sir, it *must* happen. An excitement will take place, which cannot be allayed. The people expect that something shall be done. They expect, that the basis of representation of the State shall be equalized, and the right of suffrage extended: and they will be deeply dissatisfied, if it is not done. I said, that you could not extend the right of suffrage, and engraft this principle of a compound basis into your Constitution: and none are, or can be consistent, but those who oppose the whole. For, the very moment you extend the right of suffrage, you grant a power, which, if the white basis is rejected, will call another Convention. And, Sir, permit me to say, that the calmness with which we have met, and the mutual respect and decorum, which distinguish the present body, shew clearly, that we are in no danger of that bloody sword, which was so ominously brandished over us, by the gentleman from Hanover, (Mr. Morris); but, if we insist on what the people disapprove, we shall have east and west, lowlands and highlands, unite in the call of another Convention, who will put out the obnoxious principle, and then the just rights of the community will every where prevail.

And is there any thing to forbid this equalization of rights? If it shall prevail, the majority will still remain below the mountains: In a House of one hundred and twenty, there will be nineteen more Delegates from the eastern, than from the western side of the Blue Ridge. I do not go on the speculations of the gentleman from Brooke, (Mr. Doddridge.) I do not believe, that the majority will ever be found beyond the mountain, unless the policy of the Old Dominion shall be to encourage the growth of the black population, and discourage that of the white. I know, indeed, the immense tract of mountainous country which the State possesses; and I rejoice that she does possess it. It is her impregnable security; a stronger barrier than the Balkan. But it is a region, which never can possess a population so dense, as that below the mountains; nothing like it. Well, Sir, this negro property (it is very disagreeable to me to be obliged to touch the subject, but the fault is not mine; it lies in my way, and I cannot avoid it;) this negro property has increased, is increasing, and calls for the deepest consideration. I intend no idle appeal to the fears of Virginia; I know what the old Virginians are too well; a more gallant people is not on the earth: the only fear they know, is the dread of a dishonorable action. But what I state are facts. There exists below the head of tide-water, a mass of that population, which besides 23,000 free blacks, contains 150,000 slaves. There they are, Sir. The Colonization Society has failed to remove them. You cannot get them to go out of Virginia; and I think they would be blockheads if they did, living as comfortably as they do. This black population is fast increasing. The white population is nearly stationary. There lies a wide-spread region of country, as fair and fertile, and every way desirable, as any on which the sun shines: and when we contemplate its situation, to what conclusion are we naturally led? To this, Sir: that the whole tide of its population, both black and white, is moving with a steady but gradual current, to the west, and the time must, therefore, come when there will be in the residue of the State, a most decided majority *against* the tide-water country. Now, I ask, whether it is not better to have this majority as friends, animated by a devoted attachment to their brethren (notwithstanding a certain division on the details of the Defence Bill,) than to irritate them into a state of animosity, so that no reliance can be placed upon them in the time of war?

I claimed the Valley as an Eastern country; and I did so on the ground taken by the gentleman from Fauquier (Mr. Scott.) viz. because it was their interest to be so. The gentleman from Northampton, (Mr. Upshur) said that the Valley was not a grain-growing country; but if he lived as near it as I do, and saw as many of its huge wagons and fat horses, he could not have retained that opinion. Now, Sir, the trade of that region of the State must naturally follow the course of its rivers. Can any man believe that it will ascend the Alleghany Mountains, for the sake of going down the Ohio? And if not, what can be plainer than that that Valley has, and must have, the same interest as the lower part of Virginia? Why will gentlemen resolve to believe, that this our ancient Commonwealth, must be as distinctly divided by conflicting interests, as its several regions are divided on the maps?

No, Sir; it is the obvious interest of the Valley to be with us. Is it so on the Slave question? The tables we have received from the Auditor will shew, that there are only *two* white titheables to *one* black, through all the Valley. The slave population,

though numerous, is, in that part of the State, much more diffused, than it is in East Virginia. The interest is divided among more owners in proportion to the number of slaves. Gentlemen to the west of the Alleghany, feel oppressed, as not being represented; but candour requires me to say, that the taxes in that part of the State are not paid in a manner proportionate to the population. Yet there are only five whites to one black, even there. In the mean while, the tide of the black population moves westward; and it increases more rapidly in the west, than in any part of the State. Now, Mr. Chairman, what is the conclusion from all these facts? Plainly this: That if any body is so wild as to be disposed that Virginia should get rid suddenly of her coloured people, the thing is impossible. They are fixed, fast rivetted upon us.

Here, then, the whole subject rises before us: and would to God, I had the power to do justice to it. But I feel that it is otherwise, and I must confine myself to a few of its most prominent points.

As it seems, that we *must* extend the right of suffrage, how vain will it be to introduce into our Constitution, a principle odious to the people, from its aristocratic character? Notwithstanding all that has been said on this floor, against the right of men to vote, you find few men who will deny that *they* themselves have that right, either by nature, or in some other way. I am for extending the right of suffrage, not merely because I think it proper in itself, that every free white citizen, should have some share in the Government, but because it is the only way to counteract the effects of the increase of the black population in Virginia. I am against offering a premium to induce our labouring white people to leave our soil. I would have that class of the community retained and encouraged among us, as the best means of preventing the disproportionate increase of the slaves. The labour of the country is the wealth of the country, be it performed by white men or black. The black labourer is represented through the person of his master, but the white labourer is not represented at all.

Here Mr. G. went into a series of illustrations on the relative importance of labour and money; contending that there was nothing valuable in the community apart from the soil itself, that was not the effect of labour; that the resources of the country had not been yet drawn out: and argued to shew that it was better entitled to representation than wealth could be: and from thence insisted on the necessity of an extension of the right of suffrage. He never thought that a freehold was the only qualification on which men ought to be allowed to vote. Society lives on its labour, not on its capital; if not, its capital would soon be exhausted. If, said he, you extend the right of suffrage in a fair and equitable manner, you will satisfy the country. There will be no excitement, and the whole effect of the alteration you produce, will be to remove the seat of power, not across the mountains, but only a little further up the country, than where it now resides. We, who live in the middle region of Virginia, have slaves as well as you. You profess to fear, that the Valley will go with the west, and that the two will unite their power to oppress and injure you. If that fear be well founded, the measure you propose offers no remedy. Let the Valley unite itself with the west, and let them be joined by all the non-slave-holders below the mountains, and any resistance of yours, on any scheme of representation, must prove utterly futile. You cannot withstand their will. Adopt what scheme you please, they must have a majority in the Legislature. It is the interest of my portion of the State to equalize representation on any basis: that effect cannot be avoided, and if it could be, there is nothing in that part of the State hostile to the interests of any other part.

The gentleman from Orange, when arguing for a minority, referred the Committee to the Senate of Massachusetts, where property is the sole basis. But there is a striking difference between the Senate of Massachusetts and the Senate of Virginia, as to the frequency of their election. In Massachusetts they are chosen annually; in Virginia, only once in four years. And as to taxation, the chief burden of the contributions in Massachusetts is imposed by the people themselves as divided into wards. The taxes laid in the Legislative Hall are comparatively few; and for even these, the legislators are perpetually before the people in their annual elections.

Gentlemen talk about checks and responsibilities. Is the responsibility of which they speak, the responsibility of a Governor or of the Senate to the House of Delegates? We all know how such checks may be counteracted by combination. The only effectual responsibility in a free State, is responsibility to the people. They are never in favor of their own oppression; and although individually, may think them unjust to *their* claims, they are *rarely* so to the *general* interests. The gentleman from Fauquier (Mr. Scott) speaking about projects to tunnel the Alleghany, referred to the case of the James River canal, in which he supposed a pledge was given, or at least understood to be given, that if the Legislature would make the necessary grant to carry on the improvement, our produce should not be taxed. That a loan was obtained, and when difficulty was felt in paying the interest, a tax was imposed upon tobacco. I was here at the time, and was in favor of the project of improvement,

and against the tax on tobacco. Now, I ask, who voted for that tax on tobacco? The whole lower Virginia interest. If there were any exceptions at all, they were (as we heard lately) *rari nantes*. They all voted by a simultaneous movement, to lay a tax of a dollar a hogshead on tobacco, notwithstanding the prohibition in the act of incorporation of the James River Company, by which they were bound not to raise their tolls, till the rate of transportation should be reduced. Yet the gentleman says, that the pledge then given, was immediately violated.

[Mr. Scott here rose to explain. He had not charged a breach of faith on any individuals. He had merely stated a fact, which he saw in the Statute Book.]

Mr. Gordon said, in reply, that it was much more agreeable to him to think, that all the gentlemen were equally just: and he had no doubt, that those who voted the tax, were upright and honorable men, and did what they supposed to be right. The case only proved, that a majority could sometimes do wrong: but, said Mr. G. come the imposition from where it may, one thing is certain, that we continue to pay it to this day: and when I hear the munificent power of lower Virginia lauded and magnified, by a strange association, this *tobacco* tax always comes into my mind. It was carried by a majority of one vote only: and well do I remember, with what ardour and ability the gentleman from Augusta (Mr. Johnson) resisted it to the last, in the Senate. Yet this case is brought up to have weight on the present question. Sir, I have no doubt that the gentlemen voted from the fairest motives. The motive avowed by some was to cure the country of middle Virginia, of its fondness for internal improvement, and, to speak the truth, I believe it has, thus far, operated very effectually to that end. Our country complained of the tax, and endeavored to get it repealed; but in vain: all who voted to lay it on, voted to keep it on. But this case, so far from furnishing an argument, for inequality of rights, has its whole bearing the other way. Do you give us our fair power in the Government, and then tax our tobacco, if you can? Sir, I am not against the tobacco country. As to the increase of the tolls, it was referred to a committee of two gentlemen, who reported in its favor. They were both enthusiastic advocates for internal improvement; one of them was successfully prosecuting a work of great interest on the Roanoke, and the other had his own residence on the banks of James river, and was willing himself to be taxed.

And now, Sir, I ask, what have all these subjects of internal improvement to do with the question before us? What prevents us from going on to lay the foundations of a Republic, on those sacred principles of equal rights, for which the patriots of America have always contended? I, Sir, insist, that the people are capable of self-government, and that they ought to enjoy it; that the power shall not reside in A or B, but in the whole community; and that no free white male citizen should be excluded, but those who have excluded themselves, by the immorality of their character.

After an apology for occupying so long the time of the Committee, and a reference to the embarrassment under which he had spoken, Mr. G. then resumed his seat.

Mr. Morris here went into an explanation of the course he had pursued in relation to the incorporation of the Potomac Company, to which allusion had been made by Mr. Gordon. He had voted for the act incorporating the company, not conceiving it at all to involve the question, as to the right of the United States' Government to bring their spades upon the soil of Virginia. The application of this company to Congress, was totally distinct from their application to Virginia. They had applied to Congress merely as constituting the local Legislature of the District of Columbia, through a part of which District they wished to carry their canal. He could not perceive, what this had to do with the question before the Committee.

Mr. Mercer said, that he did not rise to enter into a discussion, which had already occupied the Committee for seven days: but simply to state the reason why he should vote against Mr. Scott's amendment. That amendment proposes a basis which is already acted upon in the election to the Senate; and being attached to the amendment (of Mr. Green.) which proposes a compound basis for the lower House, the vote in favor of one must cover both. Such a vote he could not consent to give.

Mr. Johnson said, he had not risen to discuss the merits of the general question, but only to say a word on the last amendment; for it was a little remarkable, that on this which, strictly speaking, was the only question before the House, not one word had yet been said, calculated to indicate, either how any one would vote upon it, or how any one ought to vote upon it. The latitude which had been unavoidably allowed in the course of the discussion, had resulted in this, that the whole debate hitherto had been occupied on the comparative merit of the resolution of the Legislative Committee, proposing the white basis exclusively in the House of Delegates; and the amendment of the gentleman from Culpeper, (Mr. Green) proposing as a substitute the compound basis in that House. The last amendment offered by the gentleman from Fauquier, (Mr. Scott) sought to introduce the white basis in the Senate, going on the ground that the compound basis shall prevail in the lower House. Mr. John-

son said he should vote against this amendment ; not because he thought white population an improper basis for representation in the Senate, but because he thought that question could be better considered, more fairly decided, as well as more fully understood, when the Committee should have disposed of the question of representation in the House of Delegates, and should come directly to consider the subject of the Senate. Besides, said he, this amendment takes it for granted, that we are to have representation on one principle in the one branch of the Legislature, and on another principle in the other. Those who are of this opinion, must have a preference in relation to which of the two shall be on the white, and which on the mixed basis. Those who prefer giving the white basis to the House of Delegates, will, of course, be against the amendment now last before us. I prefer it, as furnishing a check to the power of the Senate, and shall, therefore, vote against it also.

Mr. Scott said, that the very reason given by the gentleman from Augusta (Mr. Johnson) operated with him to vote the other way : But the gentleman from Loudoun (Mr. Mercer) had said that the present amendment gave them no more than they had already. He would ask of that gentleman to point out a single clause in the Constitution which establishes a white basis in the Senate : he, at least, had never seen such a clause.

Mr. Mercer replied that he had not asserted that the Constitution has such a passage, but the Constitution certainly does not forbid it, and it has been established by an act of the Legislature.

Mr. Scott said he was aware of that : but what he proposed by his amendment was, to give that arrangement a Constitutional sanction. Its whole authority, at present, is no more than that of any other ordinary bill passed by the Legislature. Gentlemen insisted on having a white basis of representation : he could not go with them the entire length they demanded, but was willing, as an *utinatum*, to consent to that basis in the Senate.

Mr. Johnson would suggest one enquiry to the gentleman who advocated the amendment last proposed. Where was the precedent, or where could any just reason be found, to sanction such a course as it proposed ? No man in the Convention, he presumed, was disposed to disturb that part of the Constitution which declares, that there shall be two branches of the Legislature ; one, numerous, and frequently elected, and coming directly from the people, charged with their wishes and stored with a knowledge of all their wants, to present their petitions, advocate their rights, and claim the remedy of their wrongs : The other, select in its character, few in its numbers, a longer term of service, and so graduated in the rotation of those terms as to render the body perpetual, charged with the duty of revising the proceedings of the representatives of the people, of detecting their errors, and correcting them : in whom confidence may be placed, that they will have the firmness to resist wrong, and the intelligence requisite to perceive, and to decide upon, what is right. These doctrines he understood to be acknowledged by all ; and these rules, none that he knew of, wished to disturb. But the ground taken by those who wished to see the Constitution amended was, that in the popular branch of the Legislature, charged more especially with the wishes and wants of the people, the people do not now enjoy an equal representation ; although in the other, and the controlling branch, they are justly represented. You wish, said Mr. Johnson, a censor (for you all contend for placing some limit upon the majority,) and for that end, you provide a Senate. But the effect of the present amendment, instead of making the Senate a censor upon the House, goes, in effect, to make the House of Delegates a censor upon the Senate. Now, I call upon all who have any regard to the just principles of Government, to its harmony and its consistency, to tell me why such a distinction should be established.

Mr. Scott observed in reply, that he would give the gentleman one or two reasons. Both the branches of the Legislature were popular in their character : both being chosen by the people, and responsible to them ; and the question was, which of them should be placed as a guard upon the taxing power ? We contend that we are entitled to place that guard in the stronger branch of the Legislature. We wish to have our rights protected, inasmuch as we bring a larger stake into the community : we bring our persons not only, but our property with us ; and we ought, therefore to have the stronger security. Again, the interests of property are more easily infringed than those of persons. We expose our person in the streets, we place our less valuable property within the walls of our houses, but we lock up our gold in a strong box.

Mr. Nicholas said, that he wished to explain the vote he should give. He had listened with attention to the arguments urged on both sides, and his conviction was that the compound basis of representation was the only true and proper basis in both Houses. Why should the gentleman from Augusta, (Mr. Johnson) impute any improper motive to those who were in favor of the present amendment ? For his own part, he thought that the arguments of the gentleman from Fauquier (Mr. Scott) went very conclusively to shew, not merely that the compound principle should be introduced into the larger branch of the Legislature, but that it ought to prevail in both

branches. But, it was possible, that the vote on his amendment, might serve to try how far gentlemen of opposite views could come to some compromise, and yield a little of their respective convictions. Can it, asked Mr. Nicholas, be imputed to us as a fault, that we are willing, at least, to make the experiment? Or are the gentlemen resolutely determined to go to all extremities? The amendment appears to me wise in another aspect. What security have we who wish to take a middle ground, that gentlemen after having obtained that principle of representation which they desire in the lower House, will not, afterwards, when we come to fix the basis of the Senate, insist upon, and carry it there also? I am willing to take this amendment as an experiment, to try what are the views and feelings of other gentlemen; reserving to myself to pursue such a course in the issue, as I may then deem expedient. As to the propriety of establishing the white basis in the House of Delegates, rather than in the Senate, the argument of the gentleman from Augusta, goes on a *petitio principii*. It takes for granted the very question in dispute, viz. that the white basis of representation is the most proper in itself. We think otherwise. We prefer the mixed basis: and so thinking, we desire to have it first established in the most numerous House of the Legislature.

The question was now taken on the amendment of Mr. Scott, and decided in the negative. Ayes 43, Noes 49.

So Mr. Scott's amendment, (proposing the white basis in the Senate, and the compound basis in the House of Delegates,) was rejected.

The question then recurring on the amendment proposed by Mr. Green, viz: to strike out the word "exclusively" from the resolution reported by the Legislative Committee, and insert in lieu thereof, the words "and taxation combined," and the vote being apparently about to be taken,

Mr. MONROE, rose and spoke as follows:

It is with reluctance, Sir, that I now rise to address you, the reasons for which, I need not repeat, but being under the necessity of giving my vote, I owe it to my constituents who have generously placed me here, to the Commonwealth I have so long served, and to myself, to explain the grounds on which I act. I must do it with the utmost brevity, and I fear that I shall fail in giving the explanation which I wish.

I have seen with the deepest concern, a concern I want language to express, the divisions which exist in this body, and in the Commonwealth; because I anticipate if they shall be persevered in, the most unhappy consequences. I consider it the interest of every section of the Commonwealth, to unite in some arrangement, which may be satisfactory to a great majority of this House and of the State; and even to sacrifice a portion of their respective claims, rather than to fail in the accomplishment of the great object, for which we have met. If we go home without having agreed upon a Constitution, or if we shall agree upon one, and it shall be passed by a small majority, what will be the effect? An appeal will immediately be made to the whole community, which will excite repellant feelings among the people, in one section against those of the other, which will endanger the dismemberment of the State. If it should be rejected by them, or passed by a small majority, the same result might follow. Sectional feelings already existing, will be nursed and cherished; they will increase and spread, till at length, one part of the community will be pitted against the other, and a deep and malignant acrimony ensue, and where will it end? In an actual dismemberment of the Commonwealth; which would be the worst evil that can befall us; a result which would be equally calamitous to all. Should it take place, the party which had pressed its claims with most earnestness, would suffer as much as the others. If the State should be severed, will the General Government agree, that the dismembered part shall be admitted as a separate State into the Union? I doubt it. But if it should agree to it, could we then get forward, with all our objects of internal improvement; objects which I have always advocated, and in the accomplishment of which I have taken a deep interest, with the same success, as in our present situation? I have considered these improvements, as very important to the strength and welfare of the Commonwealth, and stability of the Union. I have wished to see them prosecuted, but within the limited resources of the State, and with the aid of the United States. What else is there that can so effectually bind us together? If the Atlantic States should be separated from those of the west, the country would be ruined. The western States would then be arrayed against those on the Atlantic, and endless strife be the consequence. If Virginia should be dismembered, on the ground of the present controversy, will not the Carolinas and Georgia, experience the same fate? The same principles are involved, and causes exist there, though not to the same extent. Those causes do not exist in the new States, where the emigration was sudden, and the interests of all the emigrants, are nearly the same. There are causes of disunion among us, which do not apply to them, and if we can bind the States together, by opening communications between them, then our union will be perfected, nothing can ever break it.

There are two great waters in Virginia, the James river and the Potomac, which I am very anxious to have connected, with the western waters to which they approach. The Roanoke is a third one, which may, in some degree, be connected with the western waters, and more intimately with those of the Chesapeake. These objects may be much better accomplished, if the State remains united, than if it should be dismembered.

What are the grounds of this division? On what does it rest? I regret that I am incompetent to go at large into a consideration of them. It is contended by those who reside in the western part of the State, that representation in the Legislature, shall be based on white population alone: It is contended on the other hand, by those who live in the east, that it shall be based on the principle of population and taxation combined. These are the two grounds of difference. I am satisfied, that the claim of those in the west, is rational under particular circumstances. It has often been suggested here, and I accord with that view, that putting the citizens in an equal condition, and the basis which they claim is just: It is founded on the natural rights of man, and in policy also, under certain circumstances. But look at the Atlantic country, and what is their claim? They are the oldest portion of the State; they have a species of property, in a much greater amount than the people of the west, and this they wish to protect. It consists of slaves. I am satisfied, if no such thing as slavery existed, that the people of our Atlantic border, would meet their brethren of the west, upon the basis of a majority of the free white population.

What has been the leading spirit of this State, ever since our independence was obtained? She has always declared herself in favour of the equal rights of man. The revolution was conducted on that principle. Yet there was at that time, a slavish population in Virginia. We hold it in the condition in which the revolution found it, and what can be done with this population? If they were extinct, or had not been here, white persons would occupy their place, and perform all the offices now performed by them, and consequently, be represented. If the white people were not taxed, they also would be free from taxation. If you set them free, look at the condition of the society. Emancipate them, and what would be their condition? Four hundred thousand, or a greater number of poor, without one cent of property, what would become of them? Disorganization would follow, and perfect confusion. They are separated from the rest of society, by a different colour; there can be no intercourse or equality between them: nor can you remove them. How is it practicable? The thing is impossible, and they must remain as poor, free from the controul of their masters, and must soon fall upon the rest of the society, and resort to plunder for subsistence. As to the practicability of emancipating them, it can never be done by the State itself, nor without the aid of the Union. And what would be their condition, supposing they were emancipated, and not removed beyond the limits of the Union? The experiment has in part been tried. They have emigrated to Pennsylvania in great numbers, and form a part of the population of Philadelphia, and likewise of New-York and Boston. But those who were the most ardent advocates of emancipation, in those portions of the Union, have become shocked at the charges of maintaining them, as well as at the effect of their example. Nay, Sir, look at Ohio, and what has she recently done? Ohio acknowledges the equal rights of all, yet she has driven them off from her territory. She has been obliged to do it. If emancipation be possible, I look to the Union to aid in effecting it.

Sir, what brought us together in the revolutionary war? It was the doctrine of equal rights. Each part of the country, encouraged and supported every other part of it. None took advantage of the other's distresses. And if we find that this evil has preyed upon the vitals of the Union, and has been prejudicial to all the States, where it has existed, and is likewise repugnant to their several State Constitutions, and Bills of Rights, why may we not expect, that they will unite with us, in accomplishing its removal? If we make the attempt and cannot accomplish it, the effect will at least, be to abate the great number of petitions and memorials, which are continually pouring in upon the Government. This matter is before the nation, and the principles, and consequences, involved in it, are of the highest importance. But in the meanwhile, self-preservation demands of us union in our councils.

What was the origin of our slave population? The evil commenced when we were in our Colonial state, but acts were passed by our Colonial Legislature, prohibiting the importation, of more slaves, into the Colony. These were rejected by the Crown. We declared our independence, and the prohibition of a further importation, was among the first acts, of State sovereignty. Virginia was the first State, which instructed her Delegates, to declare the Colonies independent. She braved all dangers. From Quebec to Boston, and from Boston to Savannah, Virginia shed the blood of her sons. No imputation, then, can be cast upon her, in this matter. She did all that was in her power to do, to prevent the extension of slavery, and to mitigate its evils.

As to our western brethren, I feel as deep an interest for them, as for those on the Atlantic border. I have so long represented the Commonwealth, that I have no sectional feeling. I look to the Commonwealth, and seek the welfare of the whole.

As to the question of boundary, what was the conduct of Virginia? Like the other Colonies, she claimed the boundaries, and the extent of territory, granted to her by her Charter. Virginia stood on the same footing with the other States. They all held, under their Charters. But as the revolution advanced, it began to be contended by those States, whose territory was covered with population, that those who held vacant lands, should throw them into a common stock, for the benefit of the whole, and the contest was pushed to such an extent that menaces of hostility begun to be uttered. To quiet this discontent, Virginia ceded to the United States, the territory which she held, to the north-west of the Ohio, out of which three States of the Union have been formed. Kentucky then, also a distant part of her territory, but separated by mountains from the rest of the State, claimed independence. Virginia consented to this also. And what did she then fix as the western boundary of the State? The Ohio River and the Cumberland Mountains. All the residue of her boundary, was left as it stood before, in confidence, that the extent was not too great, and that all the inhabitants within it, would be held together by a common interest. What has been her course, as to the settlement, quite up to the boundary line? It has been ever fair, open, manly, and generous. She has seldom refused the erection of a county, whenever it was sought. So at least I am assured, for I have been absent, in the performance of other duties, and cannot be expected, to recollect the details, of this subject. She has been guilty of no oppression, as has been acknowledged here, where, indeed, I have witnessed with delight, the mutual respect and confidence, with which gentlemen, on opposite sides, speak of each other; and I most earnestly hope, that they will remain, firmly bound together.

As to the best arrangement for the settlement of this question, I will frankly state my own views. I hold concession to be necessary on both sides. I think the claim of the West strong; but that that of those, who reside on the Atlantic side, is equally so. It is said, that by the principle, the latter contend for, the natural and political rights of men, would be violated. I do not so view the case. I think that it admits of a different view; that is, to a certain extent, and with the necessary modifications.

I am an advocate for the extension of the right of suffrage, and on that subject I am ready to go, as far as the most liberal can desire. I will here state an incident which occurred when I was in the Legislature of Virginia in 1810. Petitions were then presented, praying for a Convention, and one of the objects desired, or urged in the debate, was an extension of the right of suffrage. I had just seen the effects of this right in other countries: I had recently been in England and France, and witnessed popular movements in both countries, particularly in France. I was present during three of the great movements of the people, who seemed to act without any check or control. I saw one of these movements directed against their existing Government, and by which it was literally torn to pieces. It was at length repressed, with the bayonet, by Pichegru. In another the Convention was most violently assailed; the multitude, burst into the Legislative Hall: they were met and opposed, by the members; they killed one, and cutting off his head, marched with it on a pike to the President's Chair. I witnessed this scene. The third of these popular movements, was also an attack on the Convention. The Convention was about to pass over the Government to the Directory and the two Councils. The excitement among the people was great, (being fomented, as I believe, by the agents of foreign powers, for a political purpose,) and they had like to have overthrown the Government, but after much bloodshed, they were at length repulsed. I had seen also, popular movements in England, though not of so marked a tendency. I confess that this conduct of the people of France, under a Government which was exclusively their own, made me pause. I wished the tendency of the measures, asked for, to be carefully weighed. I hesitated, not from any thing I had ever seen in my own country, but from what I had seen of man, elsewhere. I reflected long, and at length, became willing, to extend the right of suffrage to all those, who have a common interest in the country, and may act, as free and independent citizens. We are differently situated from any other nation on the face of the earth. If self-government can exist any where, it is in these States, and in Virginia as well as in any other part of our Union.

I will carry the right of suffrage as far as any reasonable man can desire. Then the rights of all the citizens will stand upon the same ground: the poor man and the rich, will stand on the same level. As to the arrangement of districts, and the protection of property by some reasonable guarantee, I do not see how it can affect the question, of equal rights, among the citizens. It will not affect it, within any one district, where there are both poor and rich men. If the plan was to create an order of nobility, or to make the right of suffrage, depend on much property, it might enable the rich, to oppress the poor; but that is not the case; it leaves both on the same ground, and gives the one no advantage over the other. I only say, that representa-

tion should be based, on the white population, with some reasonable protection for property. But how is this to be done? It may be done in two modes. First it may be arranged, as it is in South Carolina, by taking both into consideration; base your representation on the white population of the State, and combine that, with the proportion of taxes throughout the whole; then each district will have its own share. The other mode is thus: Let one of the branches of the Legislature be placed upon the basis of white population alone, and the other branch, on the compound basis of population and taxation. If this plan be adopted, then the question arises, in which branch, shall the white basis prevail? and in which the compound? Will you give the basis of white population only, to the House of Delegates or to the Senate? I think it will be more safe, for both sections, for the western and Atlantic country, if you give it to the House of Delegates, and for the compound basis, to prevail in the Senate.

If you could agree on this arrangement, the country will, I think, be satisfied, and there will be an ample check upon the course of legislation, by the structure of the Senate. The popular branch, may then originate whatever it shall think most for the good of the country; and if, through the stimulus of heated feeling, they should propose any improper measures, the Senate will operate as an immediate check. It was on this principle, that I voted against the proposition to establish the white basis for the Senate.

Mr. Chairman, I thought it was my duty, to rise and state the grounds of my vote, so far as my ability, and the state of my health, would admit. I wish to see the basis of white population alone adopted for the House of Delegates, and the compound basis of representation, consisting of white population and taxation combined, for the Senate. This is my view.

Mr. Giles, in moving for the rising of the Committee, took occasion to express his gratification at the course and general tone of the debate, and his hope that some proposition for a compromise, would conduct it to a fortunate result. He intimated a doubt whether the state of his health would permit him to address the Committee to-morrow, and he did not wish to be considered as bespeaking the floor: but made a conditional promise, to present his views if able, and the attention of the Committee should not be otherwise occupied.

The Committee thereupon rose, and on motion of Mr. Johnson, the House changed its hour of meeting for to-morrow to eleven o'clock, and then adjourned.

TUESDAY, NOVEMBER 3, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Croes of the Protestant Episcopal Church.

The House having gone into Committee of the Whole, Mr. Stanard in the Chair, the question being on the amendment offered by Mr. Green to the first resolution reported by the Legislative Committee, which resolution is in these words: *Resolved*, That in the apportionment of representation in the House of Delegates, regard shall be had to the free white population *exclusive*ly; and which amendment proposes to strike out the word "exclusively," and insert in lieu thereof, "and taxation combined."

Mr. LEIGH of Chesterfield, said he rose to address the Committee, on this vitally interesting question, under circumstances peculiarly disagreeable to him—having to follow the venerable member from Loudoun (Mr. Monroe) who favored the Committee with his views, yesterday—and who, from his advanced age and long experience, from the high place he had filled in the service and in the confidence of his country, and from the large space he occupied in the eyes of mankind, possessed great weight of character, to deepen the impression on the minds of others, of any opinions he might utter—weight of character, of which he himself (as he had often felt before and never more painfully than now) had none, literally none. Nevertheless, this was an occasion, on which he could take counsel only from his sense of duty. And, he believed, if George Washington were to rise from the dead, and to propose such a compromise as that offered by the venerable gentleman, so partial as in his conception it was, so ruinous, so destructive, so damnable, to the dearest interests of the people who had sent him here, he should find the moral courage in his heart to reject and to oppose it, even coming from him. The *stettrunt comæ*, he might experience—but not (he thought) the *vox faucibus hæsit*—on the contrary, he should be apt to utter a shriek of alarm and terror, that would strike the dullest ear and the dullest understanding, though not perhaps the hearts of such reformers, as were willing to make the experiment on the body politic, how large a dose of French rights of man it can bear, without fever, frenzy, madness and death.

He said, all the little knowledge he possessed, and all his habits of thinking, were merely professional; habits of thinking, confined to narrow questions of municipal law and justice, and little suited to the examination and discussion of great questions of State, which require the greatest reach and the widest range of thought. He felt himself under a sort of necessity to begin with a clear and fair state of the case and of the question.

He had then, in the first place, to inform the Committee, that there is *assessed*, of *land tax*, upon the twenty-nine counties lying below the Blue Ridge and above tide water, containing about 196,500 tax-paying inhabitants (average per head) 34 cents; upon the thirty-six counties and four towns, lying on tide water, containing about 184,500 tax-paying people, 31 cents; upon the fourteen counties between the Blue Ridge and the Alleghany, containing 124,000 tax-payers, 27 cents; and upon the twenty-six trans-Alleghany counties, containing 134,500 tax-payers, 12 cents. Of the tax on slaves, there is assessed on the people of the twenty-nine middle counties below the Blue Ridge and above tide-water, (average per head) 28 cents; on the people of the thirty-six counties and four towns on tide water, 24 cents; on the people of the fourteen Valley counties, 7 cents; and on the people of the twenty-six trans-Alleghany counties, 3 cents. The tax on horses and carriages, assessed on the tax-paying people of the twenty-nine middle counties (average per head) is 9 cents; on those of the tide water country, 8 cents; on those of the Valley country, 8 cents; and on those of the trans-Alleghany country, 7 cents. The total of these direct taxes, assessed on the people of the twenty-nine middle counties, is 72 cents; on those of the tide water country, 64 cents; on those of the Valley country, 42½ cents; and on those of the trans-Alleghany country, 22½ cents. The country east of the Blue Ridge contains about 381,500 tax-paying inhabitants, and the taxes assessed on them, averaged per head, stands thus—land tax, 32 cents 7 mills; slave tax, 26 cents 8 mills; horse and carriage tax, 8 cents 7 mills; total of direct taxes, 68 cents 2 mills—and the country west of the Blue Ridge contains about 258,500 tax-paying inhabitants, and the average per head of taxes assessed on them, is 19 cents 6 mills of land tax; 5 cents of slave tax; 7 cents 6 mills of the tax on horses and carriages; total 32 cents 2 mills.

The tax assessed on the people of the Congressional district composed of the counties of Sussex, Southampton, Surry, Isle of Wight, Prince George, and Greenville, (one of the least fertile tracts of country in the southern part of the State) is 62 cents, average per head; the tax assessed on the people of the district of Brunswick, Lunenburg, Mecklenburg and Dinwiddie, (an adjoining district of medium fertility) is 75 cents; that assessed on the people of the district of Halifax, Pittsylvania and Campbell, is 71 cents; and that assessed on the people of the district of Powhatan, Amelia, Nottoway, Chesterfield and Petersburg, is 97 cents; while the tax assessed on the people of the northern district of Loudoun, Fairfax and Prince William, amounts to an average of no more than 57 cents; and that assessed on the people of the rich and fertile Valley district of Frederick and Shenandoah, (the finest part of the State) averages only 43 cents per head.

The average per head of direct taxes assessed on the people of Frederick, is 56 cents; Loudoun, 56 cents; Jefferson, (the finest county in the State) 55 cents; Augusta, 54 cents; Berkeley, 38 cents; Shenandoah, 31 cents; Kanawha, 29 cents; Ohio, 21 cents; Brooke, 19 cents; Harrison, 17 cents; and Monongalia, 15 cents—while the average amount assessed on the people of Fluvanna, is 71 cents; Nelson, 79 cents; Amherst, 81 cents; Buckingham, 82 cents; Campbell, 84 cents; Orange, 88 cents; Albemarle, 90 cents; Goochland, 92 cents; Cumberland, 92 cents; Amelia, 106 cents; Nottoway, 119 cents; Powhatan, 122 cents; and that little despised county of Warwick, 75 cents; that is, 20 cents more than Jefferson.

In these estimates, it should be observed, free negroes were included as tax-paying citizens, because they were so in the eye of the law, though it is well known they in fact contribute little or nothing to the Treasury: the tax on merchants' and other licenses was excluded, though in truth they were borne by the consumers in the immediate neighborhood: the tax on tobacco inspected, imposed under the pretext of providing a fund for insurance of tobacco burned in the public warehouses, and borne wholly by the tobacco planters, was also excluded: and the gross taxes assessed were estimated instead of the amount paid into the Treasury. The estimate, too, was founded on the taxes of the year 1828, while the numbers of tax-paying citizens were ascertained by the Census of 1820, since which there has been a greater proportional increase of white population in the western than in the eastern part of the State.

Mr. L. said he had been furnished by his friend the honorable gentleman from Culpeper (Mr. Green) with an estimate, in which the free negroes were (as they ought to be) excluded from the number of tax-paying citizens, and the taxes on licenses and on tobacco inspected were excluded from the amount of taxation, and which was founded on the amount of direct taxes actually paid into the Treasury in 1828, and the estimate furnished by the Auditor of the white population in 1829. And it thence

appeared, that the twenty-nine middle counties contained a white population of about 197,000, and pay (average per head) of land tax about 34 cents, of slave tax 28 cents, and of the horse and carriage tax 9 cents: the thirty-six counties and four towns on tide-water contain a white population of about 165,500, who pay an average of about 34 cents of land tax, 27 cents of slave tax, and 9 cents of horse and carriage tax: the fourteen valley counties contain a white population of about 138,000, who pay an average of about 24 cents of land tax, 6 cents of slave tax, and 7 cents of horse and carriage tax: and the twenty trans-Alleghany counties contain a white population of about 181,300, who pay an average of about 9 cents of land tax, 2 cents of slave tax, and 5 cents of the tax on horses and carriages. The white population east of the Blue Ridge is about 362,500, and west of the Blue Ridge 319,300. The first pay of the land tax an average of 34 cents, the latter only 15 cents: the first pay of slave tax 28 cents, the latter only 4 cents: the first pay of the horse and carriage tax 9 cents, the latter only 6 cents.

Pursuing the comparison, Mr. L. stated, that for every dollar *levied* on the people west of the Blue Ridge, there was *levied* on the people east of the Blue Ridge \$3 16 per head; and for every dollar *paid* by the Western people, the Eastern *pay* \$3 24 per head. And these proportions of the burthens borne by the two great divisions of the State, have continued for a long series of years.

It had been supposed, Mr. L. understood, that a tax on neat cattle would prove comparatively light to the Eastern, and oppressively burdensome to the Western, people. He believed, it had been his fortune to be the first person to propose or rather to suggest that tax, when, in the session of 1812-13, he had the honor and the responsibility of being Chairman of the Committee of Finance. War was raging on our maritime frontier: the Federal Government told us, in plain terms, that the local authorities must look to the local defence, and depend on their own means: it was absolutely necessary to raise more revenue, a war revenue, by some means or other. Lands, slaves, horses and carriages, had been, time out of mind, the principal, he might almost say, the only productive, subjects of taxation; and thus the people of the eastern part of the State had always borne a great proportion of the burden. It was proposed to increase those standing taxes, and, casting about for means to reconcile the Eastern people to these additional burdens, by drawing a small increase of revenue from the West, the tax on neat cattle occurred as the best suited to the purpose. It was, therefore, suggested—but it was not then imposed. It was received with such a moaning low, as if the animal on which it was proposed to lay the tax, had smelt the blood of a slaughtered fellow-creature, and raised its plaintive voice for sympathy from man and brute. The war continuing, and the State Treasury as well as the Federal, uttering many a hollow groan, the tax on cattle was at length imposed in 1815, but never afterwards renewed, and ever since, the re-bellowing of that cow tax, and the spectres of our fellow-citizens whose deaths are imputed to the pestilential climate of Norfolk in the month of November (by the way, they were sent there by the Government of the United States, not of Virginia, and were not drafted from the tramontane militia alone, but from every part of the State) have been raised, again and again, on all occasions, to prove the enormity of the burdens borne, and the transcendent services rendered, for the defence of their Eastern brethren, by the people of the West. But what was the produce of that cow tax, and by whom was it paid? Excluding the counties of Jefferson, Accomac, Elizabeth City, Richmond, Norfolk, and Norfolk borough, (of which there are no returns,) the burden of that tax was borne, in almost exact equality, by the East and the West—the average being 3 cents 8 mills per head. Such is the fact, let it be accounted for how it may.

In 1815, in the extreme exigencies of the State, taxes were imposed on furniture, mills, tanneries, professions, trades, stamps, pictures, plate (for so they called silver spoons, the only article of the kind the people had)—in short, on almost every species of property, as well as additional taxes on lands, slaves, horses and carriages. Of these taxes, the country east of the Blue Ridge paid \$495,589—and the Western country \$141,360. For every dollar paid by the West, the East paid \$3 50, average per head.

I will not affirm, said Mr. L. that these statements are absolutely free from all inaccuracy—but the inaccuracies, if any, are very trivial—the estimates have been examined by men more competent to the work than I pretend to be: I challenge investigation. And from these statements, some propositions, very material to be considered, flow by direct induction.

In the first place, there is one peculiar and most convenient subject of taxation, peculiar too and most delicate subject of legislation, of which the people of the West possess comparatively a mere modicum, and the farming country of the North a very moderate share, while the people of the East and of the more Southern planting countries hold a vast mass—I mean, *slaves*.

It is evident, in the next place, that it is hardly possible to find any subject of taxation, or to devise any tax, direct or indirect, of which the people of the East will not

pay at least as much as those of the West; and as to the ordinary taxes, we pay a third more than the West, of the taxes on horses and carriages, more than twice as much land tax, and seven times as much of the slave tax.

And this may serve to account for another fact manifested by these statements, far more satisfactorily than that generous disregard of their own interests, which the gentleman from Frederick so courteously attributed to the people of the East—the acknowledged fact, that the existing Legislature has never abused its power as to taxation—of its acts of misrule in other respects, it seems, we are, in due time, to hear the charges and the proof. The East could not impose burdens on the West, without imposing far heavier burdens on itself. The West has had, all along, that very bond with surety from us, which my friend from Fauquier so justly demanded of the West for us—the pledge of our own interest and self-love—an interest in the depositories of power not to abuse it—no paper guarantee—but a hold upon the hearts of men, which bea true to self-interest, if to nothing else.

This also accounts for another fact, very observable in our history—that whenever any grand and munificent scheme of Internal Improvement has been offered to us, striking to the imagination and almost seducing the mind from the exercise of reason, it has found favour in the North and the West, while the South and the East have evinced a spirit, often described as niggardly—that the South and the East have shewed themselves loath to vote money for any such purposes, or for any purpose but to supply the pressing wants of the State. Taking the exactions of the Federal and of the State Governments together, I doubt whether there is a people on earth, more heavily taxed than the slave-holding planters of Virginia. We feel the weight of those State taxes, which our brethren of the West and North, paying no equal share, find so light and easy.

In the last place, seeing that the burdens of taxation are thus unequal now—if there be any man so strong of faith, as to entertain no fears that the inequality *may* be aggravated by transferring the balance of the power to the west—power over taxation and property—none can be so green, or so mellow, as to hope, that the inequality is likely to be *thereby* corrected. One of the main causes of discontent, which led to this Convention, that which had the strongest influence in overcoming our veneration for the work of our fathers, which taught us to condemn the sentiments of Henry and Mason and Pendleton, which weaned us from our reverence for the constituted authorities of the State, was an overweening passion for Internal Improvement. I say this with perfect knowledge; for it has been avowed to me by gentlemen from the west, over and over again. And let me tell the gentleman from Albemarle (Mr. Gordon) that it has been another principal object of those who set this ball of revolution in motion, to overturn the doctrine of State Rights, of which Virginia has been the very pillar, and to remove the barrier she has opposed to the interference of the Federal Government in that same work of Internal Improvement, by so re-organizing the Legislature, that Virginia too may be hitched to the Federal car. This also, in substance, has been often avowed to me, and that by gentlemen for whom personally I have the highest respect. The Federal Government points a road along the Valley, or along the foot of the Blue Ridge, or across the country at the head of tide-water; and State Rights fall or tremble at the very sight of this tremendous ordnance. It must be manifest to all men's minds, that without a vast increase of its revenue by the State, or the aid of the Federal Government, all those splendid schemes of Internal Improvement, so passionately supported by the North and West, must prove futile and abortive. If, therefore, the balance of power be transferred to the west, the taxes will in all likelihood be greatly augmented, and most certainly they will not be reduced.

And, then, Mr. Chairman, the question is, whether, when money is to be raised for any purpose—to defray the expenses of the civil list, or for the public defence, or for public education, or for Internal Improvement—the people of the west may justly claim power, forever hereafter, by one and the same vote, to give and grant three dollars of our money, for every dollar they give and grant of their own? And, then, to appropriate the revenue, according to their notions of justice and policy? Whether, while the people of Loudoun give and grant 56 cents of their money, those of Frederick 56, Jefferson 55, Augusta 54, Berkeley 38, and Shenandoah 31 cents—they may reasonably claim power, to give and grant, by the same vote, from the people of Fluvanna 71, of Nelson 79, of Amherst 81, of Buckingham 82, of Campbell 84, of Orange 83, of Albemarle 90, and of Goochland 92 cents? Whether, while the rich people of Berkeley give and grant 38 cents, and those of Shenandoah only 31 cents, of their money, they shall have power, by the same vote, to give and grant 75 cents from the poor people of Warwick? Whether, while the people of the thriving county of Kanawha, give and grant 29 cents, Ohio 21, Brooke 19, Harrison 17, and Monongalia 15 cents; they shall have power by the same vote, to give and grant 92 cents from the people of Cumberland, 106 cents from those of Amelia, 119 cents from those of Nottoway, and 122 cents from those of Powhatan? And that, for purposes, in which

those who pay the most, can have little or no interest,—and those who pay the least, must have a great and direct interest? If the taxes be uniform, (as they must be,) the consequences are inevitable.

Sir, if the claim be yielded to, I know no happier illustration of the effects, than that furnished by the metaphor of the gentleman from Norfolk, the other day. He told us, that *representation* and *taxation* are not twin streams, rising in the same glen, separated by accident, uniting in the vale below, and rolling the joint tribute of their waters to the same ocean: they rose from different fountains, they flowed in different directions, and emptied into different oceans. Yes, indeed—if we adopt the principle reported by the Legislative Committee—*representation* will rise in the Mountains, and overflow and drown the Lowlands; while *taxation*, rising in the Lowlands, and reversing the course of nature, will flow to the Mountains, and there spend, if not waste its fertilizing steams, over every narrow valley and deep glen, and mountain side.

Gentlemen from the west, have exhorted us to discard all care for local interests—they tell us, that, if they know their own hearts, their opinions and course are not influenced by any such paltry considerations. Without doubting the sincerity of these professions, I doubt whether they do know their own hearts—without impiously setting up myself for a searcher of hearts, I doubt whether *they* have searched their hearts with sufficient scrutiny—nay, whether any scrutiny would have been successful. It is a divine truth, that the heart of man is treacherous to itself, and deceitful above all things. This we know with certainty, that the opinions of the western delegation, on this question, conform exactly with the interests of their constituents—they are perfectly unanimous—no division among them—none at all. And there is the great county of Loudoun—Why (as Louis XIV. said to his grand-son, when he departed to mount the Throne of Spain)—why are there no longer any Pyrenees?—Why is the Blue Ridge levelled from the Potomac to Ashby's Gap, though it swells again to Alpine heights, as it proceeds thence southward, to divide Fauquier from Frederick? This miracle has not been worked by turnpiking the roads. Look at the census, and observe that the white population of Loudoun, is three-fold that of the black; look at the Auditor's reports, and mark the fact, that Loudoun pays not half as much tax, as some of the poorer slave-holding planting counties; consider her common interest with all the upper Northern Neck in internal improvement, and their common opinions concerning State Rights: and then, if I mistake not, the question will be very easy of solution. The votes from the Orange, the Albemarle, the Campbell, the Pittsylvania, and the Norfolk districts, which (I know not why,) are all counted on as securely, as if they were already given; these are, indeed, disinterested, and can only be attributed to magnanimity. I presume not to enquire into the motives of gentlemen, much less to censure their conduct. I admire, but I cannot imitate their example. I have regard, especial regard, to the local interests of *my* constituents. They sent me here for the very purpose, that I might watch over them, guard, defend, and secure them, to the uttermost of my power. And, if I should disregard them, either through design or indolence—if I were even to profess to have no regard to them—it were better for me, that I had never been born—the contempt of some, and the hate of others, would pursue me through life; and if I should fly for refuge to the remotest corners of the earth, conscience—*Quis exul patria se quoque fugit*—conscience would still follow me with her whip of scorpions, and lash me to the grave.

Sir, I affirm with the gentleman from Hanover. (Mr. Morris,) that the contest we are now engaged in, though not the same in its circumstances, with that between our ancestors and Great Britain, is similar in principle. I have heard, and wondered to hear, many persons talk “of our having cast off the yoke of British slavery.” The French minister, Genet, once dared to address General Washington in that same strain; and he began his answer with those memorable words,—“*Born in a land of freedom.*” Our fathers had no yoke of slavery to cast off—their merit and their glory consisted in resisting the very first attempt made to impose one. None but freemen would have perceived the danger; none but freemen would have spurned the yoke the moment they saw it prepared for them, and before they felt its weight. The humblest slave, the basest felon, the very beasts, will, when they can, cast off a yoke that galls them. At the peace of 1763, the Colonies were warmly attached to England; nor had George III. a more loyal subject in his dominions, than George Washington. The quarrel originated in the attempt of the British Parliament to tax us; and all the grievances we afterwards complained of, were but the effects of our determination not to submit to the taxes it sought to impose, and of the efforts of Great Britain to subdue our resistance. In the language of Lord Chatham, the Commons of Great Britain claimed a right to give and grant the money of the Commons of America, without allowing them any representation at all. Our western fellow-citizens only claim power to give and grant three dollars of our money for every dollar they give and grant of their own, allowing us representation indeed, but a representation not

strong enough to refuse the grant. Suppose Great Britain had offered us a representation in Parliament, *proportioned to our free white population exclusively*—what would our fathers have said to it? What I, their descendant, now say to it—“It is mockery—you ask us to put ourselves in your power, bound hand and foot, and think because you gild our chains with a thin leaf that shews like golden freedom, we shall be so silly as to wear them.” Great Britain might have offered us a representation in Parliament, proportioned to our population, and told us truly, that our country would soon be populous, that our vast forests would soon be felled, that our vast wildernesses would soon blossom like the rose, and that in the course of some forty years, we should have a population of ten or twelve millions, and then be entitled to an equal representation. Such language would hardly have prevailed with us. But our fellow-citizens of the west, reverse the proposition—they tell us, that in thirty years the majority will surely be found west of the Alleghany, and gravely ask us to assent to a principle, which will place us, and all we have, in their power and at their mercy—our slaves, our lands, our household goods, our—but I stop, Sir. The beauty of it is, they tell us all the while, to quiet our apprehensions, no doubt—“Remember the weight of a Back-Woods vote”—comply with all our desires, reasonable or unreasonable, or never hope more—“Remember the weight of a Back-Woods vote”—that force, which moves in solid phalanx, always advancing, never relenting, never breaking.

The Commons of Great Britain claimed power over our property, and we insisted that the control over it belonged, of right and exclusively, to us the owners: so our fellow-citizens of the west ask us to give them the absolute power of taxation over us, and we insist on retaining that power in our own hands. The Commons of Great Britain claimed to exact “a pepper-corn” from us, voting millions of their own: our brethren of the west only ask power to take three dollars of our money for every dollar they contribute of theirs. Let a fair comparison be made, and then determine which claim is the more reasonable, or the more abhorrent from justice, safety and liberty. Our fathers stood justified before the nations and before high Heaven too, in resisting the pretensions of Great Britain, by all the means that God and nature put into their hands.

And now, Sir, let me be distinctly understood. Attachment to this, my native State, to every foot of her soil, to every interest of all her citizens, has been my ruling passion from my youth—so strong, that it is now (what all attachments to be useful to its objects, must be) a prejudice—I hardly recollect the reasons on which it was founded. None that know me, will doubt this. I foresaw, I foretold, this fearful, distracting conflict. I looked to it with terror from the first, and I look to its consequences with horror now. I have trembled—I have burned. I raised my *Cassandra* voice, to warn and to deprecate—if I had the strength to make it heard, I wanted weight of character to make it heeded. Never till then had I felt the want of political influence, or lamented that I had disdained the ordinary methods of acquiring it in my earlier years, though probably no efforts would have been successful. My feelings, my reason, my prejudices, my principles, all assure me, that the dismemberment of the State must be fraught with cruel evils to us of the east, and still more cruel evils to our brethren of the west. Yet, Sir—and the blood curdles in my veins while I make the avowal—I shall avow, that the preservation of the Commonwealth in its integrity, is only the second wish of my heart: the first is, that it may be preserved entire under a fair, equal, regular, republican Government; founded in the great interests that are common to us all, and on a just balance of those interests that are conflicting.

Sir, the resolution reported by the Legislative Committee, in effect, proposes to divorce power from property—to base representation on numbers alone, though numbers do not quadrate with property—though mountains rise between them—to transfer, in the course of a very few years, the weight of power over taxation and property to the west, though it be admitted, on all hands, that the far greater mass of property is now, and must still be held in the east. Power and property may be separated for a time, by force or fraud—but divorced, never. For, so soon as the pang of separation is felt—if there be truth in history, if there be any certainty in the experience of ages, if all pretensions to knowledge of the human heart be not vanity and folly—property will purchase power, or power will take property. And either way, there must be an end of free Government. If property buy power, the very process is corruption. If power ravish property, the sword must be drawn—so essential is property to the very being of civilized society, and so certain that civilized man will never consent to return to a savage state. Corruption and violence alike terminate in military despotism. All the Republics in the world have died this death. In the pursuit of a wild impracticable liberty, the people have first become disgusted with all regular Government, then violated the security of property which regular Government alone can defend, and been glad at last to find a master. License, is not liberty, but the bane of liberty. There is a book—but the author was a tory, an English tory, and he wrote before the

American Revolution, so that I am almost afraid to refer to it—yet I will—there is an Essay of Swift on the dissensions of Athens and Rome, in which the downfall of those Republics, is clearly traced to the same fatal error of placing power over property in different hands from those that held the property. The manner of doing the mischief there, was the vesting of all the powers of judicature in the people; but no matter how the manner may be varied, the principle is the same. There has been no change in the natural feelings, passions and appetites of men, any more than in their outward form, from the days of Solon to those of George Washington. Like political or moral causes put in action, have ever produced, and must forever produce, every where, like effects—in Athens, in Rome, in France, in America.

The resolution of the Legislative Committee, proposes to give to those who have comparatively little property, power over those who have a great deal—to give to those who contribute the least, the power of taxation over those who contribute the most, to the public treasury—and (what seems most strange and incongruous) to give the power over property to numbers alone, in that branch of the Legislature which should be the especial guardian of property—in the revenue-giving branch. To my mind, Sir, the scheme is irreconcilable with the fundamental principle of representative Government, and militates against its peculiar mode of operation, in producing liberty at first, and then nurturing, fostering, defending and preserving it, for a thousand years. My friend from Hanover, (Mr. Morris) has already explained to the Committee, how the institution of the House of Commons in England, grew out of the necessities of the Crown to ask aids from the people. The free spirit of the Saxon laws, mingling with the sterner spirit of the feudal system, had decreed that property was sacred. The lawful prerogative of the Crown at no time extended to taxation; and if violence was sometimes resorted to, the supplies it collected were scant and temporary. Originally, the whole function of the House of Commons, was to give money; but the money being theirs, it belonged to them to say, when, how much, for what purpose, they would give it. From the first, and invariably to this day, the Commons have been the sole representative of property—the Lords never have been regarded in that light. And from this power of the Commons to give or withhold money, have sprung all the liberties of England—all that has distinguished that nation from the other nations of Europe. They used their power over the purse, to extort freedom from the necessities of the King—and then to secure and defend it—they made his ambition, his waste, his very vices, work in favor of liberty. Every spark of English liberty was kindled at that golden lamp. “I ask money”—said the Crown—“money to resist or to conquer your enemies and mine”—“give us privileges then” (was the constant answer,) “acknowledge and secure our rights; and in order to secure them, put them into our own keeping.”—Sir, I know it is the fashion to decry every thing that is English, or supposed to be so; I know that in the opinion of many, it is enough to condemn any proposition, in morals, or in politics, to denounce it as English doctrine; but that is neither my opinion nor my feeling. I know well enough that the sentiment is unpopular—but I laid it down as a law to myself when I entered this Convention, to conceal no feeling and no thought I entertain, and never to vary in the least from an exact exhibition of my opinions, so far as it is in the power of words to paint the mind—and I have no hesitation in saying, in the face of the whole world, that the English Government, is a free Government, and the English people a free people. I pray gentlemen to cast their eyes over the habitable globe, survey every form of civil Government, examine the condition of every society—and point me out one, if they can, who has even so much as a conception, and much more the enjoyment, of civil liberty, in our sense of it, save only the British nation and their descendants. England was the inventor, the founder of that representative Government we so justly and so highly prize. I shall, therefore, still study her institutions; exercise my judgment in ascertaining what is vitious, or rotten, or unsuitable to our condition; and rejecting that, hold fast to all that is sound and wise and good, and proved by experience to be fit and capable to secure liberty and property; property, without which liberty can never exist, or if it could, would be valueless. Give me liberty in the English sense—liberty founded on law, and protected by law—no liberty held at the will of demagogue or tyrant (for I have no choice between them)—no liberty for me to prey on others—no liberty for others to prey on me. I want no French liberty—none; a liberty which first attacked property, then the lives of its foes, then those of its friends; which prostrated all religion and morals; set up nature and reason, as Goddesses to be worshipped; afterwards condescended to decree, that there is a God; and, at last, embraced iron despotism as its heaven-destined spouse. Sir, the true, the peculiar advantage of the principle of representative Government, is, that it holds Government absolutely dependent on individual property—that it gives the owner of property an interest to watch the Government—that it puts the purse-strings in the hands of its owners. Leave those who are to contribute money, to determine the measure and the object of contribution, and none will ever knowingly give their money to destroy their own liberty. Give to those who are not to contribute,

the power to determine the measure and object of the contribution of others, and they *may* give it to destroy those from whom it is thus unjustly taken. From this false principle, the scheme of representation in question, is variant only in degree—it only proposes to give one portion of the people, power to take three dollars from another, for every dollar they contribute of their own. I say, therefore, that the plan is at war with the first principle of representative Government—and if it prevail, must destroy it—how soon, depends not on the wretched finite wisdom of man, but on the providence of God.

The resolution of the Legislative Committee, proposes to give the west power of taxation over the east, though it be apparent, that, in some respects, concerning as well the objects of taxes as the subjects of appropriation, the west has not only no common interest with the east, but a contrary or different interest. The interest of the west is contrary to ours, in regard to *slaves* considered as a subject of taxation, certainly and obviously. The unavoidable inequality of taxation upon all subjects, and the unavoidable equality of benefit from the revenue, give the west an interest to augment, and the east an interest to reduce, the amount of taxes. And, as to those internal improvements, those roads and canals, which seem, in the opinions of many, to be the only objects of Government, let any man survey the face of the country, and deny, if he can, that different, more extensive, and more expensive, works of the kind, are wanted, and even projected, in the west and in the north, than are wanted or have ever entered into the imagination of the east and the south. They would expend thousands where we would expend hundreds; that is, of our money; for if the expenditure was to be of their own, I cannot doubt they would grudge it as much as we do, or more. But this has been already fully explained by the gentleman from Fauquier. We are asked, gravely and importunately asked, and in a tone as if they thought the request the most reasonable in the world, to give them power to tax us three times as much as themselves, when their great object can only be, to apply the revenue (after providing for, perhaps stinting, the civil list) to those internal improvements they have so much at heart. Let it be always remembered, that as the east has never hitherto imposed any burdens, which have not borne more heavily on ourselves than on our western brethren, so neither will it ever be possible for the east, if the taxes be uniform, as uniform they must be, to levy any exactions on the west, which will not be more grievous to ourselves, so long as we hold a so much larger mass of taxable property: whereas the west may, by a uniform taxation, impose oppressive burdens on the east, which its own population will hardly feel the weight of. I should be sorry to say any thing offensive to gentlemen from any quarter—but I must follow the lights of my own mind, and declare it as my opinion, that the cunning of man, or of the devil, cannot devise a more vexatious and grinding tyranny for any people, than to subject them to taxation by those, who have not the same interest with them, much more who have interests contrary to or different from theirs.

The resolution of the Legislative Committee, proposes to give full representation to the labour of the west, with an exemption from taxation, while the labour of the east will be subjected to taxation deprived of representation.

The complaint seems to shock gentlemen—I shall repeat my words. (He repeated them)—In every civilized country under the sun, some there must be who labour for their daily bread, either by contract with, or subjection to others, or for themselves. Slaves, in the eastern part of this State, fill the place of the peasantry of Europe—of the peasantry or day-labourers in the non-slave-holding States of this Union. The denser the population, the more numerous will this class be. Even in the present state of the population beyond the Alleghany, there must be some peasantry, and as the country fills up, they will scarcely have more—that is, men who tend the herds and dig the soil, who have neither real nor personal capital of their own, and who earn their daily bread by the sweat of their brow. These, by this scheme, are all to be represented—but none of our slaves. And yet, in *political economy*, the latter fill exactly the same place. Slaves, indeed, are not and never will be comparable with the hardy peasantry of the mountains, in intellectual power, in moral worth, in all that determines man's degree in the moral scale, and raises him above the brute—I beg pardon, his Maker placed him above the brute—above the savage—above that wretched state, of which the only comfort is the natural rights of man. I have as sincere feelings of regard for that people, as any man who lives among them. But I ask gentlemen to say, whether they believe, that those who are obliged to depend on their daily labour for daily subsistence, can, or do ever enter into political affairs? They never do—never will—never can. Educated myself to a profession, which *in this country* has been supposed to fit the mind for the duties of the Statesman, I have yet never had occasion to turn my mind to any general question of politics, without feeling the effect of professional habits to narrow and contract the mind. If others are more fortunate, I congratulate them. Now, what real share, so far as mind is concerned, does any man suppose the peasantry of the west—that peasantry, which it must have when the country is as completely filled up with day-labourers as ours is of

slaves—can or will take in affairs of State? Gentlemen may say, their labourers are the most intelligent on earth—which I hope is true—that they will rise to political intelligence. But, when any rise, others must supply the place they rise from. What then, is the practical effect of the scheme of representation in question? Simply, that the men of property of the west, shall be allowed a representation for all their day-labourers, without contributing an additional cent of revenue, and that the men of property of the east, shall contribute in proportion to all the slave-labour they employ, without any additional representation. Sir, I am against all this—I am for a representation of every interest in society—for poising and balancing all interests—for saving each and all, from the sin of oppressing, and from the curse of being oppressed.

Sir, the amendment offered by my honorable friend from Culpeper, is a scheme for balancing the various interests of the Commonwealth with exact and equal justice—not depriving *numbers* of their due weight, for it allows them full representation—yet allowing property also that fair, due and just share of representation, which is essential to its protection and security. It proposes to build up Government on the interests of society, with due regard to the rights both of persons and property; and to confide power to those whose self-love will forever prevent them from abusing it. If gentlemen prefer the federal number as the basis of representation, I shall be content. If they prefer a county representation, founded on any fair principle, respecting peculiar interests, and balancing the powers of Government accordingly—though I am sensible that this will be a more difficult operation—I shall be content. But I must forever contend, that a principle, which, in a Government professedly instituted for the protection and security of property as well as mere personal rights, disclaims all regard to the interests of property, and allows representation to numbers only, is dangerous and vitious, contrary to all the dictates of prudence and justice, and incompatible with the nature of representative Government, its wholesome operation and all its ends.

To reconcile us to a scheme so revolting, gentlemen tell us, in the first place, that the question has been settled by precedent—that it is *res adjudicata*. I said, that to found Government (meaning the *whole* Government,) on numbers alone, without regard whether the numbers quadrated with the interests of society or not, was a new principle in Virginia, and perhaps unknown in any other Government. I did not say, that no part or single branch of a Government had ever been laid on that foundation—I did not say, that no individual had ever maintained the principle—I learned at school, (from Tully, I think,) that there is nothing so absurd which some philosophers have not maintained for truth; and it might have been added, that there is nothing so unjust, which some politicians have not supported as right. The precedents which are supposed to have settled this question, are the vote of the Staunton Convention in 1815, forsooth, insisting that representation in the Legislature ought to be equalized on the basis of white population, and the act of 1816, equalizing and arranging the representation in the *Senate*, upon that principle, after full deliberation. But the principle was then applied to only one branch of the Legislature, and that not the tax-giving branch—and I, for one, shall be content with that principle of representation in the Senate now—I voted for it yesterday, and will abide by the vote, if gentlemen, on their part, will pay a just regard to the interests of property, in the tax-giving branch, the House of Delegates. Is not the difference wide as the poles asunder, between the two questions, whether there shall be a representation for the interests of property in the House of Delegates, the tax-giving House? and, whether property shall be represented in the Senate, which is not the tax-giving House? But I do not refer to the act of 1816, to repel its influence as a precedent, on the present question—I know to whom I am talking—there is not a man here who will pay the least regard to any such precedent. In another view, that transaction gave me a lesson, of which I hope I shall never cease to profit—I remember well every fact connected with its history, its origin, progress, and final consummation—and shall remember it all, to the last day of my life. They demanded the call of a Convention, of those, who, admitting that there were some defects in the Constitution which time had developed, (since no work of imperfect man can be perfect,) and especially the then inequality of representation in the Senate, yet thought that veneration for ancient and tried institutions, and loyalty founded in the heart rather than in the speculations of reason, were the best supports of Republican Government, and worthy to be preserved at any expense. The demand was addressed to such men as my friend from Norfolk (Mr. Tazewell) who had, like me, fallen into that fatuity of judgment, which deems virtuous prejudices virtuous principles. To avoid the call of a Convention, the bill for equalizing the representation in the Senate, on the basis of the white population, was, in an evil hour, passed—I had no share in it—I thank Heaven for all its mercies, none. They told us, they would be content—that that measure would satisfy all their wishes—that they too, loved the Government which the wisdom of our fathers gave, and with such a representation in the Senate, they would never seek to disturb it more. And the gentleman from Culpeper (Mr. Green) gave warning, that if the claim to

representation in the Senate on the basis of white population was conceded, the concession would only be the motive to new demands. He has lived to be acknowledged for a prophet even in his own country. So, now, give them their favourite principle of representation in the House of Delegates—and guard property from taxation for any favourite purpose by any effectual guarantee, if such a thing be possible—or attempt to secure property, by giving it full representation in the Senate—the moment the new power of the State shall feel any check upon its action, and can no otherwise overcome it, it will raise another clamor for Convention, to cut the knot that cannot be untied. It is as true of the love of power as it is of the love of gold, *Quo plus habet, eo plus cupit*. Talk of power resting content while any power remains to be acquired—talk of it to any green, very green person—but for the love of mercy, mock us no more, by reminding us of the history of that Senatorial bill. As to the bill of the last session for organizing this body on the basis of the Congressional districts, it is not worth while to explain the way in which it was lost—the gentleman from Albemarle is best able to do it.

The next argument for the basis of white population exclusively, is deduced from the natural rights of man. I think the genius of the gentleman from Northampton (Mr. Upshur) has laid a spell on that doctrine, as one fit for any practical use. We are employed in forming a Government for civilized man, not for a horde of savages just emerging from an imaginary state of nature. If the latter was our purpose, I doubt whether we or they would think at all about their natural rights. Their political destiny would be determined by circumstances, which political philosophy would be little fitted to control. I cannot conceive any natural right of man contradistinguished from social Conventional right—The very word *right* is a word of relation, and implies some society. While Robinson Crusoe was alone in his Island, what were his rights? To catch the goats and tame them—to kill their kids and eat them. When Friday came, how did they regulate their natural rights? He saved Friday's life—he gave him bread—and Friday became his servant. And that, I believe, was about as republican a Government as any men thus fortuitously brought together, would ever form—the stronger would be master. By the way, I think *Defoe's* a better book on the science of Government, than Cocker's Arithmetic or Pike's either. But gentlemen may have just what system of natural rights they like best—provided they will only grant me, that, either by natural law, or Conventional law, or municipal law, or the *jus gentium*—*aut quocunque alio nomine vocatur*—every man is entitled to the property he has earned by his own labor and to that which his parents earned and transmitted to him by inheritance—and that what is his property is his to give, and his to dispose of. These, I hope, are reasonable postulates: and I am much mistaken if they do not lead, by fair induction, to the utter overthrow of the resolution of the Legislative Committee, and to the establishment of the proposed amendment on irrefragable grounds.

Then gentlemen urge our own Bill of Rights upon us, as perfectly conclusive—and to the amazement of some and the amusement of others of this Committee, gentlemen, founding their whole argument on the Bill of Rights, deny the competency of the Convention of '76—and, by consequence, one would think, the authority of the Bill of Rights. Mr. Jefferson was the first person that brought this charge of usurpation against that Convention—and (so important are great men's errors) tho' with him it seemed rather matter of curious speculation only, yet ever since, when our old Constitution has been assailed for its supposed defects, this opinion of Mr. Jefferson has been referred to as conclusive authority. I had implicit faith in the opinion myself when I was at College—how long after I cannot say, not being able to fix the date when my mind came to maturity. At what period Mr. Jefferson discovered the incompetency of the Convention of '76, it were vain to conjecture—but I apprehend, it was not during the session of that body—for I know that Mr. J. himself prepared a Constitution for Virginia, and sent it to Williamsburg that it might be proposed to the Convention, during the session, from which the preamble and nothing more, was taken and prefixed to the present Constitution. Any one may see, at a glance, that that preamble was written by the author of the Declaration of Independence. I have seen the projet of the Constitution, which Mr. J. offered, in the council chamber, in his own hand writing, tho' it cannot now be found—and I have since cursed my folly that I neglected to take a copy of it, in order to compare Mr. J's democracy of that day, with George Mason's practical republicanism. But, Sir, the validity of the Constitution, as such, has been maintained by Pendleton, Wythe, Roane, by the whole Commonwealth for fifty-four years. If the Convention of '76 was incompetent to that act, it was incompetent also to abolish the Colonial Government, and that yet remains in force, in like manner as the Colonial form of Government of Connecticut was retained for years; and all the objections to the authority of our Convention of '76, might be urged with equal force, against all the Constitutions established in our sister States during the revolution. It is said the existing Constitution is not a lawful Government, because it was ordained by the representatives of the

freeholders only, and never submitted to the great body of the people. To whom is it intended, that *our* amended or new Constitution shall be submitted? To those, I presume, to whom we shall allow the right of suffrage—that is, if gentlemen succeed according to their wishes in that particular, to lease-holders, house-keepers and taxpayers, as well as freeholders. It is a remarkable truth, in the natural history of man in this country, that the sons are invariably wiser than their fathers, such is the march of mind! Our sons may allege, hereafter, that our acts never had the sanction of the people—why did we exclude women and children? Why minors, tho' enrolled in the militia, and bound to bear arms? Why paupers, whose only sin is poverty? Nay, why the felons in the Penitentiary? All are part of the great body of the people. Sir, if we shall acknowledge, that we are at this moment in a state of nature; that men have resumed their natural rights, and are entitled to insist on them to the uttermost; we may live to see the day, when it will be claimed as matter of right, that the keeper of the Penitentiary shall bring his prisoners to the polls.

Now, as to the Bill of Rights—The first article declares, that “all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”—The article enumerates *property* as equally dear and sacred with *life* and *liberty*, and as the principal means of happiness and safety—and with good reason—for, in order to live free and happy it is necessary that we live, and property is necessary to sustain life, and just as necessary to maintain liberty. Yet property is to be wholly disregarded in our fundamental institutions!—But, not to repeat what has been better said by others, I shall desire the committee to remember, that this article is expressed in the language of Locke's theory of government, then familiarly known; and that Locke, no more than the Convention of '76, understood the proposition in the broad sense now ascribed to it. Locke has had a singular fate. He was a zealous advocate of mixed monarchy—his Essay on Government was written to maintain the throne of William and Mary—his notions of practical Government, are exhibited in the Constitution he made for North Carolina, with its caciques and land-graves: yet, from *his* book, have been deduced the wildest democracy, and demented French jacobinism. He exploded the *right divine* of Kings—he showed that all Government is of human institution; yet he is supposed to have established the *divine right* of democracy. So, he was a pious Christian of the Church of England—of the low Church, however—yet, from his chapter on innate ideas, in his Essay on the Human Understanding, infidels have deduced the doctrines of materialism, infidelity and atheism. The truth is, that there is no proposition in ethics or politics, however true when duly measured and applied, which, if pushed to extremes, will not lead to absurdity or vice. It does not follow, that, because all men are born equal, and have equal rights to life, liberty, and the property they can acquire by honest industry, therefore, all men may rightly claim, in an established society, equal political powers—especially, equal power to dispose of the property of others.

It is very remarkable, Sir, that both the gentlemen from Frederick, (Mr. Cooke and Mr. Powell,) in founding the argument, they endeavoured to deduce from the third article of the Bill of Rights, read to the Committee, only the first and third sentences of it, which seem to suit their purposes, and omitted the intermediate sentence, so material to the just understanding of the doctrine the article inculcates, and so opposite to the conclusions at which they were aiming. I acquit them of all wilful unfairness—the respect I bear them, would not endure any suspicion of the kind—but the omission is a striking instance, how prone are the minds of men, studiously bent on maintaining a favorite point, to overlook, rather than to meet, difficulties, however obvious. The whole article reads,—“That Government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community.—Of all the various modes and forms of Government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the dangers of mal-administration—and when any Government shall be found inadequate or contrary to these purposes, a majority of the Commonwealth hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.”—From the first sentence, the gentlemen deduced the perfect equality of men in a social state—not as to civil rights only, but political powers; and from the last, the absolute despotic right of a bare majority, to change the fundamental laws, and to assume to themselves under a new form of polity, the sovereign power to govern without limitation or check. Read the whole article, and it will be seen, that it means to declare, that when the existing Government fails to produce happiness and safety; fails to protect *property* as well as *liberty*, which in the first article are recognized, as the means of happiness and safety; and appears not to be effectually secured against the dangers of mal-administration: then, and not till then, the majority has the right to reform, alter or

abolish it, and to substitute another, better calculated to produce happiness and safety; better suited to secure life, liberty, and *property* without which neither life nor liberty can be enjoyed or maintained; and more effectually secured against the dangers of mal-administration. But so long as the established Government answers those cardinal purposes of its institution, the majority may, indeed, have the *physical power*, but it can have no *moral right*, to overturn it. Now, we have the authority of the venerable gentleman from Loudoun, (Mr. Monroe) that under our present Government, in the course of fifty-four years, there has been no wrong, no oppression—Again: the sentence which the gentlemen overlooked, distinctly affirms the great principle for which we are so earnestly contending, that it behoves men engaged in framing a Government, to establish a just and wise Government—not a Government founded on theoretical principles, and squared according to the exact model of the natural rights of man, which, being necessarily the same in all societies of mankind, would, if followed, eventuate every where in the same form of civil polity—but a just and wise Government, adapted to the peculiar circumstances of the people for whom it is intended. No Government can be just, or wise, or safe, which, either wholly or in any material degree, gives one portion of the people the principal power of taxation, and imposes on the other, the principal duty of contribution—no Government can produce the greatest degree of happiness and safety, or fail to destroy them, which does not provide the most jealous security for property, which does not wed power to property, which disclaims, in the first principle of its organization, all regard to property. No Government can be just, or wise, or safe for Virginia, which shall place the property of the East in the power and at the disposal of the West. Whenever they shall take away the little earnings of my labour, or any part of them—whenever they shall seize the bread I earn for my children—for their own local purposes—against my consent, and the consent of all those who represent my interests—and I shall be bound to submit to such exaction, without means of redress; I shall be obliged to them, sincerely obliged to them, to take away my life too; I shall not desire to survive an hour. To return to the sentence in the Bill of Rights, which the gentlemen from Frederick overlooked; it was only by that omission, that they made George Mason's Bill of Rights pronounce sentence of condemnation upon George Mason's Constitution; condemned him out of his own mouth, of violating those sacred rights of man which he acknowledged and declared. So it happened to Zadig—I allude to Voltaire's tale—a fragment of paper was found, containing these verses in his hand-writing—

By crimes of deepest dye,
He's of the throne possess'd,
'Gainst Peace and Liberty,
An enemy professed.

And these lines were construed into a seditious and traitorous libel against the reigning Prince; and the unhappy author was doomed to death. But, as they were leading him to execution, a parrot flew to the place, with another fragment which saved his life; for it exactly fitted the former, and on it were written other words, which entirely changed the complexion of the supposed libel. The whole read thus—

By crimes of deepest dye, we've seen the earth made hell;
He's of the throne possessed, who all their power can quell—
'Gainst peace and liberty, love only wages war—
An enemy professed—and one we well may fear.*

The examples of our sister States, who are supposed to have framed their Governments upon the principle recommended by the Legislative Committee, has been as earnestly pressed upon us, as if it were true, that they have in fact set us any such examples, and certain, that what is suitable to their condition is also suitable to ours. Of the six New England States, it will be found, on an examination of their institutions, that not one of them has in fact adopted any such principle; which is remarkable enough, considering their dense and homogenous population, their comparatively small territory, and the consequent small diversity of their interests. The *new* Constitution of New York (whether it be an *amended* one or no, I shall not presume to say) *professes* to adopt the principle now recommended to us, and yet *departs* from it, in allowing each county, no matter how few its population, at least one vote; a very material modification: and, supposing the *city* of New York shall continue to grow for a few years longer, as it has done for a few years past, if the *State* of New York do not

* The English lines are doggrel, nor do we know where Mr. Leigh found the translation. The original French verses are quite pretty:

Par les plus grand forfaits j'ai vu troubler la terre;
Sur la trône affermi le roi sait tout dompter—
Dans la publique paix l'amour seul fait la guerre;
C'est le seul ennemi qui soit à redoubter.

rue the day it gave the *City* such excess of representation, out of mere respect to theoretical, and contempt of practical equality, I shall abandon all pretensions to political foresight. The Constitution of New Jersey gives each county an equal representation, so does that of Delaware. In Pennsylvania, the representation is apportioned according to the *taxable inhabitants*: and every county is allowed at least one. When the Constitutions of the North Western States were formed, their population was small, and all free, and there was no diversity of interests: and when those of the South Western States were formed, their population was small too, and they were all planters and slave-holders, so that they had no diversity of interests, which it was necessary to balance, in order to secure. North Carolina and Maryland are in a similar situation with us—and the Constitutions of both give to each county an equal representation. Suppose Maryland should be seduced, instead of being warned and deterred, by our example, and should be unwise enough to call a Convention to amend her Constitution, and to equalize her representation; does any man suppose her people will be weak enough, in deference to the rights of man, to give Baltimore a representation in proportion to its free white population, and thus, in effect, to constitute that city mistress of the State? Baltimore would have one-fifth of the whole representation; and, acting in mass, would almost invariably prevail over the rest, since the rest would be weakened by division. South Carolina, finding herself in circumstances similar to ours, though the diversity of interests is by no means so great there as here, has adopted that very compound basis of population and taxation, which the amendment of my friend from Culpeper proposes; and Georgia has adopted the federal number, in apportioning her representation, which comes very nearly to the same thing. It is wise to respect the institutions of our sister States—to obtain light, to borrow wisdom, to take warning, from any quarter—but, surely, to follow the examples of those, whose situation is different from ours, and who were under no necessity to exercise any jealousy of numbers for the safeguard of property; and to neglect the example of those, whose situation is similar to ours, and who yet had less occasion than we have, to provide such security for the interest of property—this would not be to profit by the examples of other States, but to despise them.

The gentleman from Norfolk (Mr. Taylor) and the gentleman from Augusta (Mr. Baldwin) have told us, that, disguise the principle of the compound basis of white population and taxation, as we may, or as we can, it is giving political power to the few over the many—to the wealthy few—to property over persons—and it is aristocracy. Now, I pray you, Sir, turn your attention to the Constitution of the United States, which apportions representation, and direct taxation too, to numbers, ascertained by adding to the free population, three-fifths of the slaves. And I ask those gentlemen to tell me, whether they are or are not zealous, devoted admirers, friends and supporters of the Federal Constitution? If they answer *no*, I have nothing more to say. If they answer *yes*—as I think they will and must—do they consider that principle in the Federal Constitution, *aristocracy in disguise*? Do they approve aristocracy in the Federal Constitution, and only abhor and abominate it in the State Government? Is it anti-republican in the one, to give property a representation for its security, and perfectly republican to give property the same kind of security in the other? What reason can ingenuity assign for the adoption of such a principle in either, which is not equally applicable to both? Sir, to charge the amendment of the gentleman from Culpeper with *aristocracy*, is out of the question—the amendment only proposes to provide effectual *protection* for the interest of property, by placing the care of them in the hands of those to whom they belong, nor are its friends to be deterred from demanding a just security for it, such as the Federal Constitution intended to provide, by any anathemas against the principle as aristocratical.

Mr. Taylor of Norfolk, rose to explain. He said he had never uttered any anathema against any gentleman. He never entertained the sentiment, and for that reason could not express it. He begged leave to state that he had offered his sentiments to the committee on every occasion, as the gentleman from Chesterfield said he would do. He would soften nothing—he would mitigate nothing, but would express the sincere conviction of his heart, and would conceal nothing he had said. He would not attribute improper motives to any gentleman, but he had to repeat, that the principles which the gentleman sought, honestly, no doubt, to introduce, were in his judgment inimical to all he was taught to respect—to all our free and equal institutions—and at any hazard —

Mr. Leigh. Is it merely an explanation the gentleman is going to offer?

Mr. Taylor. Yes: he disclaimed any intention of imputing improper motives to gentlemen.

Mr. Leigh. I understood the gentleman correctly. He imputed aristocracy to the amendment we are insisting on, not to the friends of the amendment. I did not understand him to impeach *our motives*; and I assure him I do not question *his*, or those of any other gentleman. This is a vital question; and we must all be indulged with perfect freedom in debate.

Sir, we the people of the East demand of our fellow-citizens of the West, the same principle of representation for the security of our property, which the Southern States demanded of the Northern, and these conceded, in framing the Federal Government. Look to the experience of the Federal Government; and it will be found, that the representation apportioned to the Southern States has not been more than adequate to the security of their interests—no, not adequate. A gigantic system of protecting duties is proposed—the Southern States in vain exclaim against its partial and oppressive operation—in vain deprecate, remonstrate, struggle—a bare majority hesitates not to impose the tariff. Of the constitutionality of that system of measures—of its policy considered by itself, with a view to political economy—I shall give no opinion now: all I have to say, is, that in a Government constituted like ours, it never can be wise to persist in any system of measures, against which a large portion of the nation, though it be a minority, separated from the rest by geographical and political divisions, and by political interests too, so far as the proposed measures are concerned, raises its united voice. In my poor opinion, every commercial operation of the Federal Government, since I attained to manhood, has been detrimental to the Southern, Atlantic, slave-holding, planting States. In 1800, we had a great West India and a flourishing European trade—We imported for ourselves, and for a good part of North Carolina, perhaps of Tennessee—where is all that trade now? annihilated.—Where is the capital which carried it on? gone. Sir, we have not an adequate representation in the Federal Government. And as to that which we have, I have heard one gentleman doubt the wisdom and justice of the principle which gave it to us—the gentleman from Albemarle. [Mr. Gordon explained—he thought he had said, that wise statesmen might doubt the wisdom of that principle of representation.] If the gentleman does not doubt himself, I have only to ask his attention to another consideration. Suppose the Legislature of this State reformed and based upon white population; the time comes for making a new apportionment of our representation in Congress; the West insists, that that too shall be apportioned according to white population; the Loudoun district joins the West, as it does now; and Albemarle, in its zeal for the rights of man, forgets her old love and abandons State Rights—then shall we see Virginia, like Kentucky, hitched to the car of the Federal Government, for Internal Improvement and protecting duties.

Mr. Leigh, being fatigued, here gave the floor to Mr. Powell.

On the motion of Mr. Powell, who expressed a wish that the Committee would rise, in order to allow the gentleman from Chesterfield another day to conclude his remarks, the Committee rose and reported progress.

The Convention then adjourned till to-morrow at 11 o'clock.

WEDNESDAY, NOVEMBER 4, 1820.

The Convention met at eleven o'clock, and was opened with prayer by the Right Rev. Bishop Moore of the Protestant Episcopal Church.

The House having again resolved itself into a Committee of the Whole, Mr. Stanard in the Chair, and the question still being on the report of the Legislative Committee, as proposed to be amended by Mr. Green, by substituting for white population *exclusively*, white population *and taxation combined*,

Mr. LEIGH of Chesterfield, resumed.—Mr. Chairman, I yesterday considered the examples of our sister States, and of the Constitution of the United States, so far as they have any bearing on the proposition of the Legislative Committee, and on the amendment of the gentleman from Culpeper, with a view to shew, that representation based on taxation and population combined,—and representation of persons and property, and of slaves as one or the other—were not, in the general sense of America, contrary to the principles of Republican Government, or at all obnoxious to the imputation of aristocracy. Gentlemen may think it strange, that I should take any pains to clear our proposition of that imputation. But, I have lived long enough to know, that words are things, and potent things too—and that if an odious epithet can be fixed on any proposition or measure, that will suffice to enlist thousands against it, and in the end, generally, to damn it forever. In truth, the question we are considering, is a question of State policy, unaffected by any theories, democratic, republican, or aristocratic—it is simply this: which scheme of representation ought we to adopt for the House of Delegates—that reported by the Legislative Committee, or that proposed by the gentleman from Culpeper? Which is the more politic, wise and just, having regard to all circumstances, and to the rights and interests of each and every part of the Commonwealth?

The Committee must pardon me, if I recur, for a brief space, to that provision of the Federal Constitution, commonly called the Federal number. Its history is some-

what curious. Originally, under the articles of confederation, each State was to contribute quotas in proportion to the assessed value of its landed property; but that principle being deemed inconvenient in practice, it was thought best to substitute a principle of contribution, apportioned to the population of the several States. In the discussion of this proposition—part of the debate has recently been published—the Northern States insisted, that slaves were *persons*, and that we ought to contribute in proportion to our whole population, bond and free; and the Southern States contended, that they were *property*, and ought not to be taken into the estimate of population, in settling the rate of contribution; each party maintaining that side of the question, on which, in that aspect of it, their interests lay. No wonder! all men do so—always have done,—and ever will do so. It was not till 1783, that Congress agreed to propose an amendment, by which the States were to contribute in proportion to their population, to be ascertained by adding to their free citizens three-fifths of their slaves. Whether or no this amendment was ratified by the States, I do not certainly know; but this was the origin of the *Federal number*. I have had recourse in vain, to every source of information accessible to me, to ascertain how that precise proportion of the slaves, *three-fifths*, came to be adopted—what mode or principle of estimate led to it. Some reason for it, there must have been—and it is remarkable, that if the Federal number be taken as the basis of representation, any where I believe, certainly in Virginia, it will give a result pretty nearly the same as the combined basis of white population and taxation—in Virginia, the difference, in a House of one hundred and twenty, would not be more than one delegate, to any *section* (speaking in modish phrase) or division of the State, divide it as you will, by lines East and West, or North and South. The Federal Convention of 1787 had, for the first time, to arrange a representation of the people in Congress. The Statesmen of the North and South now, doubtless, changed sides with their interests: in the view of the *former*, slaves were now *property*; in the view of the *latter*, they were persons. However, they made a compromise, and agreed on the same Federal number which had been proposed in 1783.

It is contended that there is no connexion between representation and taxation; that representation can only be of *persons*; that *property* has no claim to representation; that slaves are mere property, for which, therefore, we are entitled to no representation—and it has been gravely said, that the provision of the *Federal number* in the Constitution of the United States does not in fact, and was not intended by its founders to oppugn any of these propositions. On what ground, then, do gentlemen imagine, that the basis of the Federal number was adopted? They say, it was a compromise. And how far does that carry them in the argument? The question still recurs, what was the ground of compromise? and what were the interests compromised? The Constitution provides that representation and direct taxation shall both be apportioned to the same ratio, the Federal number; that is, that representation and taxation shall be proportioned each to the other. And, Sir, I shall affirm, and that without fear of contradiction after the proofs I shall adduce, that this provision was adopted and defended on the grounds, that there ought to be the same rule for representation as for contribution—that slaves are persons as well as property—and that whether persons or property, or of a mixed character partaking of both, the South was entitled to representation for them.

Sir, I refer the Committee to the 54th number of *The Federalist* (I know not who was the author of it*) in which this provision of the Constitution of the United States is discussed, and in which after maintaining that the Southern States rightly claimed a representation for their slaves as *persons*, the author proceeds—"It is agreed on all sides, 'that numbers,' (meaning gross numbers, bond and free) are the best scale of wealth, as they are the only proper scale of representation.—Would the Convention have been impartial or consistent, if they had rejected the slaves from the list of inhabitants when the shares of representation were to be calculated, and inserted them on the lists when the tariff of contributions was to be adjusted? Could it be reasonably expected, that the Southern States would concur in a system, which considered their slaves in some degree as men when burdens were to be imposed, but refused to consider them in the same light when advantages were to be conferred."—In the sequel of the same letter, it is said: "After all, may not another ground be taken, on which this article of the Constitution may admit of a still more ready defence? We have hitherto proceeded on the idea, that representation related to persons only, and not at all to property. But is this a just idea? Government is instituted, not less for the protection of the property, than of the persons, of individuals. The one, therefore, as well as the other, may be considered as represented by those who are charged with the Government. Upon this principle it is, that, in several of the States, and particularly in the State of New-York, one branch of the Government is intended more especially to be the guardian of property, and is accordingly elected by that part

* Mr. Madison afterwards avowed in his place, that he was.

of society, which is most interested in this object of Government. In the Federal Constitution, this policy does not prevail. The rights of property are committed to the same hands with the personal rights. Some attention therefore, ought to be paid to property in the choice of those hands."

Again, Sir—I presume it will be agreed, that no man better understood the reasons on which the various provisions of the Federal Constitution were grounded, than General Hamilton. Allow me, then, to refer the Committee to what *he* said, in the Convention of New-York which ratified the Constitution, on the subject of this *federal number*—"The first thing objected to (said he) is that clause which allows a representation for three-fifths of the negroes.—Much has been said of the impropriety of representing men who have no will of their own. Whether this be reasoning or declamation, I will not presume to say. It is the unfortunate situation of the Southern States, to have a great part of their population, as well as property, in blacks. The regulation complained of was one result of the spirit of accommodation which governed the Convention; and without this indulgence no union could possibly have been formed. But, Sir, considering some peculiar advantages we derive from them, it is entirely just that they should be gratified. The Southern States possess certain staples, tobacco, rice, indigo, &c. which must be capital objects in treaties of commerce with foreign nations, and the advantage which they necessarily procure in these treaties, will be felt throughout all the States. But the justice of this plan will appear in another view—*The best writers on Government have held, that representation should be compounded of persons and property.*—This rule has been adopted as far as it could be in New-York.—It will, however, by no means be admitted, that slaves are considered altogether as *property*. They are *men*, though degraded to the condition of slavery. They are *persons* known to the municipal laws of the States which they inhabit, as well as to the laws of nature. *But representation and taxation go together; and one uniform rule ought to apply to both.* Would it be just to compute slaves in the assessment of taxes, and discard them from the estimate in the apportionment of representatives? Would it be just to impose a singular burden, without conferring some adequate advantage?—Another circumstance ought to be considered. The rule we have been speaking of, is a general rule, and applies to all the States. Now, *you have a great number of people in your State, which are not represented at all*, and have no voice in your Government: these will be included in the enumeration—not two-fifths—nor three-fifths—but the whole. This proves, that the advantages of the plan are not confined to the Southern States, but extend to every part of the Union."—You see, Sir, that General Hamilton thought, that the Southern States had as just a claim to representation for their slave labour, as the Northern States for their free white labour—and he said this to the people of New-York, almost all of whose day-labourers were free white men.

Mr. Chairman, we have been told by several gentlemen, and particularly by the gentleman from Brooke, (Mr. Doddridge,) that if the amendment proposing the compound basis of white population and taxation prevail, which he regards as a simple claim for a representation of our slaves, the effect will be, to make the people of the West the slaves of the people of the East, to the end of time. If this was intended to excite the angry feelings of the West, it was surely well adapted to its purpose. But, if it was meant for argument, it exhibited a strange forgetfulness of the scheme reported by the Legislative Committee itself, and that in a particular, concerning which, there has been very little, if any diversity of opinion. The argument is founded, first, on the *fact*, that, at this time, the cis-montane country not only pays a far greater amount of revenue, but contains also the majority of white population, which, combined, must give us a majority of Delegates; and then, on the *supposition*, that the apportionment of the representation now to be made, is to be fixed and unchangeable. And yet, the same gentleman tells us, he has no doubt, that in thirty years, the majority of white population will be found on the West side of the Alleghany, let alone the Valley—and the Auditor's estimate informs us, that the cis-montane white population, which in 1820 was greater than that on the West of the Blue Ridge by 94,000, exceeds it now by only 43,000—and the gentleman must know, that it is a part of every scheme that has been suggested, and part of the report of the Legislative Committee, that there shall be new enumerations of the people, and new assessments of taxable property, and new apportionments of the representation, in 1835, and again in 1845, and afterwards once in every twenty years at least.—Now, as the *white population* increases in the West in a much greater ratio than in the East, the proportion of Western representation will increase in virtue of that element of the compound basis; and, as their population increases, their lands must be enhanced in value, all their taxable property must be augmented, and the revenue they pay into the Treasury must also increase, and they will gain a greater share of the representation in virtue of that element of the compound basis also—unless, indeed, it be supposed that, though their population increase and their wealth too, ever so much, they ought never to contribute a greater proportional amount than they now do, and that the taxation on them

ought to be reduced, from time to time, so as to keep their contributions at the present reduced amount. The compound ratio, therefore, will work gradually, to augment their share of representation, both ways; and, in due time, to give them a greater share of it than us. I have not calculated the time which it will take, under the operation of the compound ratio, to transfer the balance of power to the West, nor am I very competent to the task; but if the gentleman from Brooke will ascertain the date when the majority of white population will be found on the West side of the Alleghany, I can venture to assure him that the tramontane country, upon our own plan, will, before that time comes, have the majority in the House of Delegates—and then, Sir, I am content that they shall have it. They will acquire it gradually, and as they *acquire*, learn to *use* it, with justice and moderation. They will not acquire it, till they learn to feel the weight of the crown they are destined to bear—and that feeling will chasten their love of power. They will not acquire it, till they shall contribute out of their pockets, under any scheme of uniform taxation, such a proportion of the revenue, as will give them a substantial community of interest with us in the imposition of taxes, if not in the appropriation of revenue. They can only acquire it, by giving us *that bond with surety*, which my friend from Fauquier (Mr. Scott) demanded—we shall have a security in their self-love, in their own interest, that they will not abuse their power. Sir, I have no unreasonable jealousy or distrust of them. Indeed, I have always known, that upon the principles of the existing Constitution, the balance of power would in time, and in no long time, be transferred to the West. Why, then, I shall be asked, have I been so strenuous a defender of our old institutions? Because, in preserving *them*, I should have preserved a great deal, apart from this, this question of the balance of power, which I dearly prize—because in preserving them, I should have avoided this very contest, which, terminate, as it may, is a sore evil in itself—because I should have preserved that sentiment of veneration for constituted authority, which is now forever lost, which gave sufficient moral force to execute the laws, and thus dispensed with the exertion of the strong arm of Government; for whenever physical force becomes necessary, the spirit of Republican Government must cease to direct the system, and even the empty form must soon perish. And now let me ask the gentlemen of the West, why are they so urgent for the immediate possession of power? for this sudden, abrupt transfer of it to their hands? when they surely ought to know, that it is impossible for us to make the transfer, without giving with it unlimited dominion over our property—without giving them power to take from the poor man of the East the fruits of his industry, and the bread from the mouths of his children. It is that rage for Internal Improvement—for wherever I see that passion, there I find the passion for reform, and thence I hear those scoffings at every sentiment of respect and veneration for the institutions our wise, prudent and virtuous ancestors bequeathed to us.

We have been told, Sir, that we have no dangers to apprehend from an immediate transfer of power to the West over the East—power to tax our property according to their ideas of justice, and to appropriate the revenue we are to pay, according to their views of policy; that we have ample security in the honesty of our western brethren; that we are mistaken in supposing, that *self-love* is the great spring of human actions; that the *moral sense* of mankind is sufficient to resist its promptings, and subdue its influence; that “self-love and social are the same.” I know, that there are individual men—few, however—who, upon some occasions—very unfrequent—can disobey the dictates of self-love, and disregard their own interests, at the call of sympathy for other individuals, friendship, affection and gratitude. But, in the history of the human kind, of all nations and of all ages, from the earliest tradition to our own times and country, there has never been a single instance of any society of men, of men acting in masses great or small, who forgot self-interest, or what they supposed to be so, for a moment. It was not generosity, which prompted France to assist us in our revolutionary struggle—it was self-love—mistaken self-love, in my opinion—but still sheer self-love. It is not generosity, which has excited our so earnest wish for the independence of the South American States of Old Spain—it is our self-love—the desire to profit by her trade—mistaken self-love again, I fear; for we shall probably lose by their rivalry more than we shall gain by their custom. It is self-love alone that recommends the system of protecting duties—the American system—to our fellow-citizens of the Northern States; and it is self-love which incites the South to such strenuous opposition. It is self-love, which now divides this Convention, on this very question.

The moral sense and the honesty of the people of the West! I pray gentlemen to understand me—they are not to suspect me of the nonsense and folly of imputing to them any peculiar vice of disposition. I entertain no such opinion of the West or of the North—if I did, I would give my vote for separation this moment. I have marked the growth of native talent, of intellectual culture, of moral worth, in the West—I have watched young merit there, in its dawning, in its rise and its meridian—with hearty good will and sincere delight; and saying this, I think I may safely vouch any

gentleman of the West, who knows me, for my witness. I admit, that the people of the West are as honest as those of the East; and I would refuse them no confidence which I would ask them to repose in us. And then I tell them, plainly, that, in my opinion, they, nor any body of men on earth, are honest enough to be entrusted with dominion over the property of others, uncontrolled by their own community of interest in that property, and in the disposition of it. This is the very dominion, which the gentlemen of the West are so importunately asking us to concede to them. Yes, Sir, they ask us to put our all into common stock with them, and then confide in the unerring dictates of their *moral sense*, that they will carve no unjust share for themselves—they ask us to put three dollars of our money into the treasury, for every dollar which they shall contribute of their own, and trust them to make a just, fair and impartial application of it for the common weal. This is the exact state of the case. The man, who, in private life, should accede to such a proposal, would be regarded as a simpleton—a natural fool—and the law would appoint a guardian to take care of his person and estate. Can the gentlemen of the West flatter themselves, that their *moral sense* is so strong, that it will always be proof against continual temptation? “Lead us not into temptation, but deliver us from evil.”—So our Saviour taught us to pray—and, in my sense of the prayer, the *delivery from evil* depends on the *exemption from temptation*.

Sir, I fear we are in the habit of counting too much upon the purity and virtue of our society, as a permanent security against all political evils. I told the committee yesterday, that I intended to open my whole mind without reserve—This is the last scene of my political life; before I came here I weeded all the hopes of ambition from my heart; and I now declare my conscientious belief, unpopular as the avowal of it may be, that from the beginning of time, never any nation made a more rapid progress in corruption, than have these United States during the last quarter of a century. I beg leave to mention a few the most obvious of many symptoms. Even in this Good Old Dominion, for one place-hunter that was to be seen when I first grew up to manhood, there are ten now—Yes, the number is tenfold at the least. They swarm in the country and in the city—they infest our public places—they invade our privacy, and disturb the quiet of their industrious neighbours with their solicitations. They are themselves marketable commodities; they put up their principles, their opinions, their votes, at auction to the highest bidder, setting the highest value upon their services, but willing to take any price they can get. Men, hardly fit for a clerkship, aspire to embassies; and men, who aspire to embassies, will descend to a clerkship—Office!—office and emolument, high or low, State or Federal!—any sort of office, which will save them the pain of earning their living by honest industry. We hear a great deal about the corruption of all orders of men in Great Britain—What is it? Does any man suppose, that when Sir Robert Walpole said, that *every man has his price*, he was talking of a price to be told out in guineas? No—some are to be purchased with honors—some with the power to purchase others—some with the emoluments of place. The case is exactly the same here.—“Go to the ant, thou sluggard; study her ways, and be wise.” There is a little white ant in the West Indies, the pest of the country—lay the smallest lump of sugar on a mahogany table, and in fifteen minutes, there will be hundreds around it—tread upon a lizard in the evening, and the next morning they will present you the cleanest and most perfect skeleton imaginable. So, Sir, the greedy expectants of office are continually on the look-out—let a poor Postmaster or Collector be *sick*, and they begin to collect their volume of recommendations—let him *die*, and before his remains are committed to his mother earth, the whole swarm is at Washington.—Then, Sir, look at the daily Press, which, in this country, is the true *exemplar vite morumque*. Why is it, that upon all political questions—presidential election, or what not—the whole argument turns on the single point, which side will get the majority? because that is the most effectual argument to carry the majority; for, the party that shall prevail, is to have the disposal of honors, and offices, and emoluments, and partizans are to be excited to exertion, or acquired, only by the hope of reward. There is another class of men, who (I think) have sprung up in Virginia, or rather began to be distinguished as a separate class, within the last fifteen years. They do not regard themselves as a part of the people—they profess themselves *the people's servants*—*the people's friends*—*the people's men*; meaning nothing more, in plain English, than that *they are the men for the people's money*.—They have no opinions and no will of their own—whatever the people think, they think—whatever the people desire, they desire—whatever the people *will*, they are content—and, therefore, whatever of honor or emolument the people have to bestow, they expect to receive it at their hands. Sir, *I am one of the people*; and I have noted the ways, and know perfectly how to appreciate the motives and the merits, of these our kind officious friends and servants. In Monarchies, the King is the fountain of honor and office: In Republics, the people. There are courtiers of the people as well as courtiers of Kings. The *motives* of both are exactly alike; their ends the same; their *conduct* is different only in mode; and it is

equally true of the courtiers of the people, as of the courtiers of Kings, that, exactly in proportion to the contempt they entertain in their hearts, for the persons to whom their flatteries are addressed, is the extravagance of their adulation. Sir, the last hope of the Republic rests in that class—and, thank Heaven, it yet constitutes the great body of the people—who, possessing the means of subsistence, if improved by honest industry, placed above the temptation of poverty, and exempt from the temptations of prosperity, never so much as dream of the emoluments of office—the honest, hard-working yeomanry of this country, who hitherto have fed, clothed, protected, and sustained society. But, how long will these pillars of the Republic remain stable and erect, under the mighty weight, with a Government, the first principle of which is, avowedly, to be an utter disregard of the interests and security of property.

Gentlemen who support the proposition of the Legislative Committee, aware that our apprehensions of danger from the practical operation of the principle are real, and seemingly aware too, that those apprehensions are not wholly destitute of foundation, have proposed to us a guaranty against any abuse of the power of taxation; a promise, so solemn, so clear, so strong, so binding on the conscience of the reformed Legislature, that its efficiency cannot be doubted. I have heard of such a guaranty, ever since this question was first started. It has been my misfortune, Sir, in all discussions concerning the necessity of reform, and the merits of the reforms proposed in our ancient institutions, not only never to convince the reformers on any one point, but hardly ever to succeed in making myself intelligible to them, though I take always the utmost pains to clothe my thoughts in the plainest words of Anglo-Saxon root that I can find; and (upon this subject of guaranty, especially) I have ever found great difficulty in comprehending *their* meaning. What seems to them clear as the noon-day sun, has been to my eyes, mist and twilight, and sometimes utter darkness. Returning from Cumberland last spring, whither I went to present myself to the people as a candidate for a seat in this body—I found at night, in the lower end of Powhatan, a newspaper, in which was a letter, explaining the general views of the writer, on the questions most likely to engage the attention of this Convention; a gentleman, whose intelligence and virtue I have ever held in the highest respect and esteem, and with whom I have been always willing to confer, to put mind to mind fairly, and to abide the result. The letter suggested what *he* thought a sufficient guaranty. With a very painful exertion of the little eye-sight that remains to me—I wish the printer would look to the mending of his types, instead of mending the Constitution—I succeeded in making out the *words*; but then, to my surprise, I could not understand the *meaning* of them. Well, Sir, the first reformer I met with, after my return to this town, knowing my particular anxiety on this head, asked me, whether I would not be satisfied with such a guaranty as the letter I had read in Powhatan, proposed. I told him, I really did not understand it. He did not express in *words*, but he *looked*, a strong doubt of my sincerity. In the evening of the same day, I fell in company with the printer; who asked me, generally, what I thought of the letter; and, the guaranty being uppermost in my mind, I told him I could not understand the passage that related to that knotty subject; and that it reminded me of a piece of humour of Swift in his *Tale of a Tub*—He states some misty, unintelligible, metaphysical question, upon which, he says, he has bestowed much reflection, and having with infinite pains acquired a clear conception of it, he shall proceed to lay the matter open to his readers; and then follows half a page of asterisks, concluding—“And this I take to be a clear account of the whole matter.” “Sir,” (said my friend, the printer,) “I dare say you mean that for jest; but it is literally true, that there was an *out* of a line or two of that passage, in the manuscript copy of the letter, which was furnished for the press and printed.” But, Sir, I do understand the meaning of the guaranty offered us by the gentleman from Fairfax (Mr. Fitzhugh.) Its meaning is very plain—There is, indeed, a fatal perspicacity in it, which leaves no doubt of the utter futility of the security it proposes to provide for us. These are the words—

“*Resolved*, That the power of the Legislature to impose taxes, ought to be so limited, as to prohibit the imposition on property, either real or personal, of any other than an “*ad valorem*” tax; and that in apportioning this tax, either for State or County purposes, the whole visible property (household furniture and wearing apparel excepted) of each individual in the community, ought to be valued, and taxed only in proportion to its value: Provided, however, that no individual, whose property (with the above exception) does not exceed in value dollars, ought to be subject to any property tax whatever: And provided, moreover, that the Legislature may impose on all professions and occupations, usually resorted to as a means of support, such taxes as may be deemed reasonable.”

“*Resolved*, That, to prevent an unfair distribution of the revenue of the Commonwealth, the Legislature ought to be prohibited from making appropriations (except by the votes of two-thirds of the members of both its branches) to any road or canal, until three-fifths of the amount necessary to complete such road or canal, shall have

been otherwise subscribed, and either paid or secured to be paid as the law may direct."

Now, the first resolution only proposes to provide, that taxes instead of being imposed on specific articles of property, shall be *ad valorem* taxes. Of the inconvenience, and perhaps the impracticability, of the scheme, in a financial view, I have nothing to say. Suppose it be ordained, that, henceforth, all taxation shall be *ad valorem*; still the power of *laying* the taxes is to be confided to the West, and the duty of *paying* them to be imposed on the East; still, the duty of contribution will lie on us, and the right of appropriation belong to them; still, three dollars are to be exacted from the East for every dollar contributed by the West; and still, the West will have, and forever continue to have, purposes to answer in the expenditure of the public revenue, in which they have, and we have not, a direct interest, and far more expensive than any in which we *can* have any direct interest. And these are the very evils, against which the proposed guaranty is professedly intended to guard us. If my neighbour, having *ten* thousand and I *thirty* thousand dollars, should propose to me to throw the whole into common stock, and leave it to *me* to determine the distribution of it between us; I should accede to the proposal readily enough—I should be sure to take back all that I put in—and I *trust*—though I do not *know*—I should be loath to meet the temptation—but I *trust* I should restore the full amount of his contribution, to him or his family. But if he should propose such a community of property, and that *he* should have the power of distribution—

[Mr. Fitzhugh explained. His proposition only contained a simple statement. It did not go to making the taxes equal on all, but to give a security against the apprehension that the whole weight would be thrown on the slave property. It was intended to guard against that only.]

Mr. Leigh. It is, then, admitted, that the guaranty was intended to protect us against unequal and oppressive taxation on our *slave* property only. But, I shewed yesterday, that the far greater mass of taxable property of *every kind*, as well as of the *slave* property, lies on the East side of the mountain; and what odds can it possibly make to us, that the unequal exaction is to be made by a tax on one kind of property, rather than another? And how does the regulation against the abuse of the power of *taxation*, affect the correlative, and to us equally dangerous power of *appropriation*? But *this* is provided for, by the second branch of the gentleman's guaranty.

He proposes in order to prevent an unfair distribution of the public revenue, to require a majority of *two-thirds* of both branches of the Legislature, to make appropriations of revenue, for any road or canal; meaning, generally, I presume, any work of public improvement. Does not the gentleman from Fairfax—I appeal to his good sense and candour—does he not himself perceive, that this proposal distinctly implies, that the scheme of representation, of which it is intended to provide a corrective, is in itself unfair? If it be fair, why should a bare majority be restrained from making appropriations to any conceivable object? Is not the requisition of this majority of two-thirds to appropriations of that kind, a plain admission, that the proposed scheme of representation does not give the East a representation adequate to the protection of our property? and are roads and canals the only objects, for which unequal distributions of public treasure can possibly be made? Is it a whit more fair or equitable, for example, that the East should contribute three dollars towards the education of the children of the people of the West, for every dollar they contribute towards the education of our children, than that we should contribute *three* dollars to their one, for the purposes of internal improvement? But, Sir, this same requisition of a majority of two-thirds of the Legislature, to appropriations of this kind, and to acts for several other purposes, has been ordained by the amended Constitution of New-York of 1820. And what is the efficacy of the provision, in its practical operation? I derive my information from an unquestionable source—from the gentleman from Loudoun, (Mr. Mercer.) I have learned from him, that the provision has been invariably defeated and rendered utterly nugatory, by combinations of the representatives of the different parts of the State, having different objects at heart, but uniting to carry the schemes of all, in order to gratify the particular wishes and to subserve the local projects of each. Now, can the gentleman from Fairfax devise any guaranty of force sufficient to prevent *Log-rolling*? (I borrow the metaphor from Kentucky, and a most apt and expressive one it is.) If he can, then I may safely promise—in the language addressed some years ago to the County Court of Giles, by the settlers of a remote corner of the county, whose only mode of punishing offenders was to refuse to *Log-roll* with them, in the literal sense of the phrase—then, I may safely promise him to come under *civilized Government*—for it seems to be imagined, that no Government is a *civilized* one, unless it be founded on the *natural rights of man*, in a *savage state*.

Sir, unless I be labouring under some strange delusion, it must now be apparent to the Committee, that the proposed guaranties are wholly nugatory.

But a compromise has been recommended to us, by the venerable gentleman from Loudoun (Mr. Monroe)—recommended to the hearts, rather than to the reason, of the Eastern delegation in this body—recommended in a tone of feeling, such as might be expected from a father seeking to heal discords among his children; and it is the feeling that dictated it, which alone, in my mind, gives any force to the recommendation. He proposes, that the representation in the *House of Delegates* shall be apportioned to the white population exclusively: and to guard the interest of property, to guard the property of the East against unjust and oppressive taxation, that the representation in the *Senate* shall be apportioned according to the combined ratio of white population and taxation. Let me ask the venerable gentleman—seeing, that his object is to provide a perfect security for the great mass of property held by the East, against abuses of the power of taxation by the reformed Legislature, that he acknowledges the right of the East to such security, and that his plan of giving us the security to which he admits our just claim, is, to found the representation in the two branches of the Legislature upon different bases—did he never reflect, that this kind of security for the interests of property, ought to be provided in the constitution of the *House of Delegates*, the *tax-giving branch*, rather than in the *Senate*, which is not, and no man intends should be, the tax-giving branch, of the Legislature? While the East is complaining of the injustice of being subjected to taxation by a power, which will not be restrained from abuse by any community of interest with them, and agitated with the most anxious apprehensions of the danger of such abuse of power, and these apprehensions are, in the opinion of the venerable gentleman, reasonable—the same gentleman, to appease our just complaints, and to allay our well-grounded apprehensions, would give us security against the abuse of the power of taxation in the frame of the *Senate* which is to have no original power of taxation, and deny it to us in the *House of Delegates*, in which the chief power of taxation is to be vested! The voice of truth and reason and justice must be silent.

But, Sir, let us suppose the proposed compromise, or a more efficient one framed on like principles, acceded to, and ordained in our reformed Constitution—let us suppose the representation in the *House of Delegates* based upon the white population exclusively, and the representation in the *Senate* based upon taxation alone, or upon the total population, bond and free, or upon the basis of white population and taxation combined—we shall then have a *House of Delegates* of from an *hundred and twenty* to an *hundred and fifty* members, and a *Senate* of *twenty-four* members. Let the relative powers of the two Houses, as to *money bills*, remain as at present—the power of originating *money bills* vested exclusively in the lower House, and the *Senate* restricted from amendment as to such bills, and bound wholly to reject them or take them without alteration. The lower House sends up a money bill—the *Senate*, thinking the taxation unjust or excessive, rejects it—the lower House returns the same bill, and the *Senate* again rejects it—a conflict ensues between the two Houses: is it not quite apparent, that the lower House has the power, either of compelling the *Senate* to take exactly such a revenue bill as they think equitable and politic, or of throwing upon the *Senate* the awful responsibility of stopping the wheels of Government? Follow the example of the Federal Constitution—leave the power of originating money bills in the lower House, give the *Senate* the power of amending them. The lower House sends up its revenue bill—the *Senate*, constituted (upon the supposed plan) the guardian of taxable property, finds the exactions unjust or enormous, and offers amendments to correct or reduce them—the lower House rejects the amendments: then, the same conflict must ensue, as in the other case, only it will now turn on the amendments of the *Senate* instead of the original bill of the other House; and the same consequences must follow. In any serious conflict between the two Houses, let us see which is likely to prevail. The members of both Houses are drawn from the same order of men, and the only difference between them consists in the duration of their service. The only operation of the *Senate* in all our State Governments (the *Senate* of the United States is organized on peculiar principles) is to suspend for a time, never to defeat entirely, the actions of the other House resolutely persisted in. The lower House is the more numerous body, more intimately connected with the people, and every way endued with greater moral and political energy. Accordingly, even under the present organization of the Legislature the *Senate* has never had the strength, for any long time, to resist any measure, in which the other House, session after session, strenuously perseveres; and when the proposed re-organization shall be made, making the lower House the representative of *numbers*, and the *Senate* the representative of *property*, the *Senate* will have still less relative strength. Let it attempt resistance to any favorite measure of the representatives of *persons*, *free white persons*; such a cry will be forthwith raised against the odious aristocracy on which its Constitution is founded. the aristocracy of wealth, as will make its members tremble in their seats, pause, waver, and at last yield, disheartened and impotent. The lower House may exercise another influence, if possible, of a more pernicious kind. As it is a numerous body, it has in fact the whole patronage in its hands, in

respect of all appointments to be made by joint vote of both branches. A Senator of Virginia, nay, many Senators, may have an ambition to be a Senator of the United States, or a Judge, or Governor (we may change the mode of appointment as to the two last, but we cannot as to the first;) such a Senator, unless he be more than man, must wish to conciliate the lower House—and then *Remember the weight of a Back Woods vote!*

Sir, I insist, that the lower House is here, as it is in England, the proper representative of the interests of property; and it is for that very reason, and no other, that its responsibility to the people, is increased by the short duration of its term of service.

Let us, however, suppose, that the guaranties proposed by the gentleman from Fairfax, (Mr. Fitzhugh,) are efficient, or that some other efficient guaranties can be devised—and let us suppose too, that in addition to those guaranties, a check upon the power of taxation is provided, by so constituting the Senate as to make it a representative of property—and that these safeguards, if preserved, are completely adequate to the intended purpose: What security would they afford us? security only so long as they shall be continued. Is there, or can there be, any security that they will be continued? We may provide for future amendments, with the most jealous care to prevent reckless innovation; but we cannot destroy the inherent power of the people to call another Convention; and the moment the representative of *numbers* shall feel the check, *numbers may*, and *numbers will*, have another Convention to abolish the check.

But it is not a consideration of this vital power of taxation alone, which should impel us of the East, to resist, to the bitter end, this transfer of power to the West. There may be unjust legislation, as well as oppressive taxation. Our slave property is a subject, in the management of which, the owners cannot admit any interference, without the extremest danger. It seems to be supposed, in the United States and in Great Britain too, that those who possess the least portion of that kind of property, are better entitled, and more competent to manage it, than those who have the most; and by parity of reason, those who hold none, have the very best title, and the greatest degree of competency, to the management of it. Upon this principle it is, that Mr. Wilberforce, and the party of the Saints in England, insist on taking the regulation of the slave property in the West Indies into *their* hands, against the earnest remonstrances of the planters to whom it belongs. So, the statesmen of the Northern States, fancy themselves better acquainted with the subject, than those of the South; and our brethren of the Northern part of this State, claim greater fitness for the task, than their fellow-citizens of the Southern counties. The gentleman from Hampshire, (Mr. Naylor,) thinks, that slavery is one of the causes of the decline of Virginia; and I suppose he would be ready to promote her prosperity, by removing this cause of her decline—

[Mr. Naylor rose, and denied the inference which the gentleman had drawn, from any thing which he had said. He deprecated the idea which had been suggested, as to the emancipation of the slaves. And he took occasion further to state, that he considered it perfectly consistent with the principles of morality and justice, situated as we are, to hold them as we now do.]

Mr. Leigh—The gentleman from Hampshire is advanced in years, and may not change his sentiments—but, when Mr. Wilberforce proposed to abolish the *slave trade*, he did not imagine, that he should ever find it wise to abolish *slavery* in the West Indies:—When men's minds once take this direction, they pursue it as steadily, as man pursues his course to the grave.

Sir, the venerable gentleman from Loudoun (Mr. Monroe) spoke of the impracticability of any scheme of emancipation, without the aid of the General Government. Is he, then, and if *he* is, are *we* reconciled to the idea of the interference of the General Government in this most delicate and peculiar interest of our own? What right can that Government have to interfere in it?

[Mr. Monroe here explained.

I consider the question of slavery as one of the most important that can come before this body: it is certainly one which must deeply affect the Commonwealth, whether the decision be to maintain it over those now in that state, or to attempt their emancipation. The idea I meant to suggest was, that the subject had assumed a new and very important character, by what had occurred in the other States, and particularly in those in which slavery does not exist. We had seen in the early stage a strong pressure for emancipation from the Eastern States, and equally so of late from the States in the West; but emancipation had thrown many of our liberated slaves upon them; in consequence of which, they have been driven back, and all interference on their part has ceased.

The subject is now brought home to them, as well as to ourselves, and the question to be decided by us is, whether their emancipation is practicable or not. Should the decision be that it was practicable, I did not mean to convey the idea that the United States should interfere, of right, as is advocated by many. I meant to suggest, that

if the wisdom of Virginia should decide that it was practicable, and invite the aid of the General Government, that it should then be afforded at her instance, and not that of the United States, as having the least authority in the matter.]

Mr. Leigh—I thank the gentleman for his explanation. And now, will he give me leave to propound to him one question—Whether, with his knowledge and experience of the operations of the General Government, he does not know, that if once it be allowed, that that Government *may* constitutionally interfere at the instance of the State, it will not be inferred, that it *can* constitutionally interfere without any instance of the State Government? The moment such an attempt shall be, there will, there must be, an end of this Union.

I wish, indeed, that I had been born in a land where domestic and negro slavery is unknown—no Sir,—I misrepresent myself—I do not wish so—I shall never wish that I had been born out of Virginia—but I wish, that Providence had spared my country this moral and political evil. It is supposed, that our slave labour enables us to live in luxury and ease, without industry, without care. Sir, the evil of slavery is greater to the master, than to the slave: He is interested in all their wants, all their distresses; bound to provide for them, to care for them, to labour for them, while they labour for him, and his labour is by no means the least severe of the two. The relation between master and slave, imposes on the master a heavy and painful responsibility—but no more on this head.

Sir, the venerable gentleman from Loudoun has told us of the awful and horrid scenes he was an eye-witness of, in France, during the reign of democracy, or rather of anarchy, there. I wish he had told us, (as he told the House of Delegates in 1810, when he opposed the call of a Convention, and re-counted those same horrors) that “he had seen liberty expiring from excess”—these were his words. France was then arranged into equal departments, with equal representation, and general suffrage—in short, enjoying the unalloyed blessing of the natural rights of man! Have I lost my senses! Is the phantom that fills my breast with such horror—the *liberty of Virginia expiring with excess*—a creature of the imagination, that can never be realized! The venerable gentleman has described those horrors in France—has painted them to us in all the freshness of reality—and then told us, in the same breath, that he is prepared to vote for the same system here. The same causes uniformly produce the same effects.—I mean to speak with freedom, yet not without the respect due to the venerable gentleman, and which I should render as a willing tribute: I cannot forbear to express my astonishment, that he should be willing to adopt, for his own country, the principles that led to those horrors he has so feelingly described—

Mr. Monroe rose to explain:

Mr. Leigh—I request the gentleman to suspend his explanation, till I conclude what little more I have to say.

I am sensible, Mr. Chairman, that some of the opinions I have advanced, and some of the propositions I have maintained, are calculated to shock the principles, I might perhaps say, the prejudices, of many. I know, that the very propositions of the truth of which I am most firmly convinced, if pushed to extremes, would end in folly and vice; but it is an eternal truth, in all the moral sciences, that no principle, however just, will hold good to the utmost extreme; and there is no argument, which by that process is not capable of refutation. I pray the gentleman from Frederick (Mr. Cooke) to ponder well those lines, which, partly in sport, more in kindness, I handed him the other day—

*Est modus in rebus—sunt certi denique fines,
Quos ultra citare nequit consistere rectum.*

It has pleased Heaven to ordain, that man shall enjoy no good without alloy. Its choicest bounties are not blessings, unless the enjoyment of them be tempered with moderation. *Liberty* is only a *mean*: the *end* is *happiness*. It is, indeed, the wine of life; but like other wines, it must be used with temperance, in order to be used with advantage: taken to excess, it first intoxicates, then maddens, and at last destroys.

Mr. Monroe now rose to explain. My worthy friend from Chesterfield, expresses his surprise at the view I now take after what I had seen in France. What I meant to convey, in the remarks to which he alludes, was, that the commotions I had witnessed inclined me in 1810, rather to oppose the petition from Accomac, in favour of a new Constitution and the extension of the Right of Suffrage, which was advocated in the debate, but that I had so far overcome that impression, as now to be in favour of extending that right. I will further explain, my opinion at that time, was not made up—I found cause to hesitate, but it was merely that the subject might be thoroughly analyzed and investigated to the bottom in a view of the conduct of men, in such circumstances through all ages. When we trace the popular movements in France to their causes, it will be seen that these causes do not exist here. The people of France had been ruled by despotism, and held in an abject and deplorable situation for ages. They were educated and reared under despotism. The idea of liberty was cherished

among them. They were devoted to it—but rising out of slavery they were incompetent to govern themselves. The effect which despotic Government has on the intelligence and manners of the people under it, is supported by all history. The great mass are ignorant and trained to obedience. Those of France, had caught the spirit of liberty, and would no longer submit to the power of the crown and nobility. They rose in a body suddenly, and with violence, and overwhelming the existing Government, they took the whole power into their own hands, but were incompetent to a proper use of it. These remarks on the condition of France will apply to all Europe, but less to England than to other European nations. It was the effort of the people of England which repelled the despotism with which they were menaced, and laid the basis of that Constitution, from which, as it has been stated by my friend from Chesterfield, all our institutions have taken their origin. But there is no part of Europe, not England itself, I fear, that could support such a Government as we enjoy here. The power was vested essentially in the popular branch, during our Colonial State, in all the Colonies. There was little to oppose it, but the veto of the Crown. All America was arrayed against the Crown. We assembled in our revolution, and crushed it, and the power of the Crown then passed to the body of the people. The people of these Colonies never were slaves: they were an enlightened people who had fled from oppression in England, and came here in search of liberty. The love of it characterized us in our Colonial state, and continued to do so up to the period of our Independence. Look at Asia, at Africa, and even at Europe, and what is their condition? If there is a portion of the earth where self-government can be maintained, it is in these United States: and I say again, that Virginia is as competent to it, as any other part of the Union.

As to the slave population, it exists here, and whether we shall get rid of it or not is for those who own it to decide for themselves. The States where it does not exist, must never interfere unless authorized and invited to do it. But if the decision shall be, that they cannot be emancipated, (and I could never consent that they should be, unless you send them away,) it is equally the interest of the non-slave-holding as of the slave-holding States, to support the latter in their authority over their slaves. Where they are, they never can enjoy equal rights with the white population; and if emancipated, interminable war would ensue. If I say it shall be the sentiment of the Southern States, that slavery must continue forever, then what has passed will induce the other States to support us.

I would never, by any act of imprudence, raise up the non-slave-holding States into hostility against the others. If you marshal them against each other, what then must be the consequence? Dismemberment will be inevitable. The European powers all fight against each other, and we should go on the same way. The non-slave-holding States would incite insurrections among our slave population, as was done by the republics of ancient Greece, and desolate the country. I am for moving with great caution and circumspection in this matter.

MR. MERCER then addressed the Committee:

In casting himself on the indulgence of the committee, in the present stage of the interesting debate by which its attention had been so long occupied, Mr. Mercer said, he laboured under the influence of feelings which he had not language to convey, and the expression of which he feared would disqualify him for the arduous task which he had undertaken to perform. The sentiment first at his heart was, that the depending question might terminate in a result, propitious to the union, and happiness to the whole Commonwealth. While desirous of extending to the people of the West a just participation in the political power of the Government; a power proportioned to their relative numbers, he entered upon the present discussion with no unfriendly feeling towards the East. Such a feeling would be equally at war with all his recollections and all his hopes. His cradle was rocked by the margin of the placid tide, though Providence had placed his dwelling by the side of the mountain torrent. He had not a drop of kindred blood flowing in the veins of any living being that did not warm the heart of some lowland man, or lowland woman. He came into this Convention not to assert the power of one portion of the State to control the other, but with a fixed determination to uphold the rights and interests of all, on the broad and solid basis of those great principles of political liberty which our forefathers had at all times struggled to maintain. Emphatically might he say this, and vouch this Assembly itself for his proof. Through what channel, he asked, did the resolution of the Legislative Committee, now in discussion, reach this Convention? By what hand was the report of that committee presented in this Hall? By that hand, which, more than any other now in being, had contributed to trace the outline and lay the foundation of the great structure of our free institutions. By whom had the principles of this report been just sustained? By his illustrious co-patriot, who, alone, of this Assembly, had enjoyed the high honor of consecrating those principles by his blood.

We are charged with asserting new and impracticable doctrines. Behold the proof of this allegation. Are they not founded on the principles, if the term may now be

allowed him, of every Bill or Declaration of Rights of every State in this Union, which has framed a Constitution since our glorious revolution? Are they not sanctioned by the concurrent voice of the wisest statesmen, and the purest patriots, on both sides of the Atlantic? Are they not the principles of the father of English metaphysics, and champion of British liberty—the immortal Locke? Are they not the principles for which Milton successfully contended against the united power of political and ecclesiastical tyranny; and for which, in a still earlier age, the noble Sydney bled?

Could this question be tried, without prejudice, its issue would not long be doubtful. The very process, by which our assailants seek to over-power us, affords sufficient evidence of the strength of our cause. Principles must be true, which can be successfully controverted only by such arguments—arguments invented and most ably enforced, by gentlemen inured to the habits of a profession, which, above all others, teaches its professors how to discover, to touch, and to move all the secret springs of the human heart. What are the prejudices which seek to obstruct our better judgment on the present occasion? Some are too obvious to elude our perception, and must be dissipated when approached. The eloquent member from Chesterfield, proclaims with seeming regret, that, between the district, which I have the honor, in part, to represent, and the western counties of Virginia, there are no longer any Pyrennees. From Ashby's Gap to the Potomac, the Blue Ridge, he tells us, has disappeared. This illusion of his own imagination, the honorable member infers, from the sympathy subsisting in the present contest, between the people of Loudoun, and their fellow citizens of the West. To the other districts, on the Eastern face of the Blue Ridge, which espouse the same side of this cause with my constituents, and obviously for the same reason, he liberally awards the praise of magnanimity, which he denies to them.

Might he not have more impartially accounted for the zeal of Loudoun for a Convention, from the notorious fact that while she pays into the Public Treasury twenty times the amount of taxes paid by the county of Warwick, and has more than six-and-twenty times the free white population of Warwick—she has but the same political weight in the House of Delegates, under the Constitution of Government which this Convention has been deputed to amend. That twenty-six freemen of Loudoun have, in this branch of the Legislature, the weight of but one freeman of Warwick.

But the honorable member, disregarding this inequality, has found the origin of the present Convention in splendid schemes of internal improvement, to which the Constitutional scruples, manifested, by Virginia, in the councils of the Union, oppose a barrier, that the new distribution of political power sought to be effected by the resolution in debate, will enable the West to prostrate. In that ardent zeal, which had prompted so many other gentlemen, as well as the member from Chesterfield, to impute to the friends of a Convention, local, selfish and sordid motives for their present union of council, they have forgotten much, and in part, the history of our Legislation on this subject.

Internal Improvement—the cause of this Convention! Who, until the second day of March, 1817, had ever heard an objection started to the Constitutional power of the Federal Government to aid, by the resources of the Union, the efforts of the States, to construct roads, or canals of general interest. A few days only, prior to this period, a resolution, recommended by the unanimous report of the Board of Public Works, passed both branches of the General Assembly, with like unanimity, to request of the Government of the United States, pecuniary aid in promoting the then contemplated junction of the eastern and western waters of Virginia by the James and Kanawha rivers. A similar resolution had passed the House of Delegates without opposition at the preceding session of 1815. It was, however, near the close of that session, on the 8th February, 1816, that a bill, to take the sense of the people on the propriety of calling a Convention, first received the sanction of a majority of the House of Delegates, and that majority embraced both the delegates from Loudoun.

This bill was afterwards lost at its third reading: but a similar one finally passed the House of Delegates with the co-operation of the Loudoun delegation during the succeeding winter, and more than a month before the President's message, of the 2d March, 1817, had excited a doubt in the public mind, of the Constitutional authority of Congress to aid the several States in the construction of works of internal improvement. A State fund, for roads and canals, had been already created, and was in successful operation. How, then, can it be candidly maintained, that the efforts so steadily prosecuted, to amend the Constitution of Virginia, by a Convention, sprung from those impediments which this Commonwealth has since thrown in the path of internal improvement, whether by withholding from that object, her own resources, or restraining the application of those of the Union?

He would, said Mr. Mercer, proceed one step farther: and to refute this charge, very briefly state a few of the reasons which prompted the fruitless effort to obtain a Convention in 1815, and which have since been more successfully urged. Among

the most prominent of those reasons, was that very inequality of representation, which has given rise to this debate, and which so shocks every feeling of political justice, that no argument has yet been heard in its vindication. Another grievance, then, also, pressing on the public consideration, was the overgrown and disproportionate numbers of the House of Delegates.

When our forefathers penned the present Constitution, there were about 140 members in that House; and they chose twenty-four, as a suitable proportion, for the number of the Senate; a body designed not only to revise the acts of the popular branch of the Legislature, but to constitute a check on the possible ambition of its leaders. But while the Senate, by the Constitutional limitation of its numbers, has been stationary, the House of Delegates has been extended, from time to time, by the multiplication of counties, to 214. More than seventy members have been thus added to the numbers of the Legislature, during a period in which the territory of the Commonwealth has been greatly reduced. For, from the county of Illinois, wrested from Great Britain in 1779, by the forces of the Commonwealth under the command of the gallant Clarke, and ceded in 1784, to the United States, no less than three States to the east, and one to the west of the Mississippi, have arisen. The county of Youghiogania, once represented on this floor, now supplies no less than eight counties to Western Pennsylvania: Kentucky has been erected into a separate State; and, along our southern border, North Carolina has a slip of our former territory, beginning at a point on the Atlantic, and gradually widening towards the Cumberland mountain.

While a reduction of the sphere of Legislation recommended a correspondent limitation of the numbers of the Legislative body, the progressive augmentation of its annual expenditure merited regard. In 1810, the entire cost of this Department of the Government did not exceed 50,000 dollars a year. It has, since, mounted up to more than twice that sum.

To restore the original proportion between the two branches of the General Assembly, and to prevent a still farther augmentation of the number of the House of Delegates, a measure required by no State necessity, and forbid by a due regard to economy, was always in the scope of that Constitutional reform contemplated by the friends of a Convention.

The abolition of the Council of State was another of their objects. Economy condemned this worse than useless appendage to the Executive, which, in destroying its unity, impaired both its vigor and responsibility. A feeble Chief Magistrate is but the tool of his Council, while to an able and unprincipled Governor, they serve as a cloak.

The friends of a Convention, with but few if any exceptions, had another and more aggravated cause of complaint. Is there a member of this body, who thinks that the right of suffrage now rests on a proper basis? Who would not, if disposed to restrict its exercise to a freehold qualification, substitute for quantity, a valuation of the land required to confer a vote. Should a freeholder be allowed to exercise the right of suffrage on fifty acres of land situated upon the summit of a barren mountain, where the crow would not build her nest, while this right is withheld from the proprietor of a farm of twenty-four acres in some fertile valley, which with its improvements may be worth as many thousand dollars? In one of the most flourishing townships of Connecticut, a territory of more than twenty square miles, there is not a farm exceeding twenty-five acres in dimensions, the minimum estate which the present Constitution annexes to the right of suffrage, without regard to its value.

Are we then, Mr. Chairman, with these apologies, to be regarded as coming here in the prosecution of schemes of narrow and sordid speculation? May I not pronounce such a charge to be the offspring of prejudice, and say that it is repelled by the history of the proceedings which have led to this Convention?

There is yet another of analogous birth which remains to be refuted before I proceed with my enquiry into the expediency of the proposed amendment of the gentleman from Culpeper.

It has been more than insinuated, that by the transfer of political power from the Eastern to the Western portion of the Commonwealth, the friends of a Convention design to shake the ascendancy of certain political doctrines, supposed to be essential to the rights of this Commonwealth, as a member of the Union.

If this transfer is required by political justice, how poor a compliment does this insinuation pay to the rights which it thus seeks to defend!

But of the members of the Virginia Delegation in Congress residing to the West of the Blue Ridge, how few are there who differ from a majority of the people of the State, in construing the Constitution of the United States, to say nothing of the gentlemen on this floor, from the counties below the mountain, who are alike advocates for the strictest construction of that instrument, and for a thorough amendment of our Constitution of State Government?

His venerable colleague, said Mr. M. had successfully repelled other prejudices which, if not utterly unfounded, might prove of fatal influence to the object of the Convention, and he now came to the consideration of the real proposition before the Committee.

The resolution of the Legislative Committee proposes to make the white population of the Commonwealth *exclusively* the basis of the apportionment of representation in the House of Delegates. It is moved by the member from Culpeper, to rest such apportionment on white population and taxation combined. After the most laborious attention to all the arguments as well of the mover of this amendment, as of the gentlemen who had sustained him, Mr. M. said he was at a loss to know how this combination was to be effected—in what proportions population and taxation were to be combined. If that of perfect equality, then what description of taxes were to be balanced against the rights of the freemen of Virginia? Shall one of the compounds be determined by taxing all the property of every citizen, visible and invisible? To this, almost insuperable objections might be urged; some of which had been forcibly pointed out, by the member from Northampton, (Mr. Upshur.) If visible property, only, shall be taxed, is all that a man possesses to be comprehended, moveable and immoveable? If one description only, or a portion only of each, which, or what part, and by what rule or ratio of numbers, quality or of value? Is it practicable to form this combined basis, and to impart to it, the simplicity, the stability, to say nothing of its intrinsic justice or propriety, which should, in a Constitution of Government, designed to be perpetual, form the ground-work of the representation of the people?

The author of the proposed amendment, since he designed to give to property, a certain practicable weight in the Government, would more readily accomplish his purpose by constituting as its measure, wealth for taxation; the thing taxed for the tax itself. This change of the basis of representation, in terms, would not alter the principles on which its justice and propriety rest, and both parties would by such conversion, be enabled better to comprehend the precise end, as well as the practicability of the proposed amendment.

For the sake of my own argument at least, I purpose making this substitution of wealth itself, for that which is its measure, in any equal system of taxation. Wealth! the basis of representation! It is proposed, indeed, to combine it with numbers, but the quality of the subject, must follow it through every possible combination, and what is true of it as a simple, may be affirmed of it as an ingredient, of any compound basis of representation, of which it may become an element.

Was wealth, then, ever before proposed in America, except in South Carolina, to be made the foundation of political power in the popular branch of a Government, professing to be free? An oligarchy this may be, open to all bidders for power; but if not an oligarchy, I have no conception of the import of the term.

And why prefer wealth, if equality of right be disregarded among the freemen of Virginia?

In savage life, mere personal qualities, as strength, courage, confer distinction, and not without reason. The term in our language, which denotes the perfection of moral worth, is borrowed from latin *virtus*, which originally signified strength, that quality of man, which barbarians esteem the first of virtues, because among them, the most useful. In the rudest as the wisest nations, age has its claims to veneration, of which my feelings, in this assembly, hourly remind me. To wisdom, all men yield respect: and as society grows older, birth asserts its more questionable claims to our homage, and learns at last, to back them by authority. Wealth, comes, last of all, to buy power and distinction, and if I must cease to be a freeman, 'tis the very last dominion, to which I will ever bow my neck. If I must choose between the aristocracy of birth or fortune, I do not hesitate a moment which to prefer. Had I not better trust my liberty, if I must have a master, to the descendant of honest parents, who may be presumed to have reared and educated their offspring with care and tenderness, than a man, I do not know, for his mere riches? If the latter be obtained, by sudden acquisition, or by secret or unknown means, I should think it incumbent on their possessor, if he claimed my confidence, and much more, if my obedience, to shew that he himself had honestly acquired his title.

To the argument of my friend from Frederick, (Mr. Cooke) that wealth would protect itself, the gentleman from Northampton, (Mr. Upshur) had replied, that it could do so, only by corruption, by the employment only, of the basest means. And shall representation be based on wealth? (Here Mr. Upshur explained.) Mr. M. said he had not misunderstood the eloquent member from Northampton, though he could not do justice to his former language, nor had the gentleman himself done so, in his explanation. If unexceptionable in all other respects, wealth (Mr. M. said) would be found in all countries, too fickle a basis of representation for a distribution of political power, designed to balance the interest of individuals, or of distinct portions even of the same community. Individual wealth! Who can fix it? He, who can stop the ever-revolving wheel of fortune. National wealth is subject, though not in the same

degree, to like uncertainty. Of what does that of Virginia consist? Chiefly of lands and slaves. No estimate of the value of the 450,000 slaves of Virginia accompanies the Auditor's Report. The lands of the Commonwealth were valued in 1817, at 206,000,000 of dollars. What are they now worth? Half that sum? He had carefully sought, throughout the Convention, for information to correct the results of his own observation, within late years, as to the change of the value of lands in Virginia. After all his enquiries, he believed they had fallen to two-fifths, of their former estimated value; and could not, now, be computed, at more than 80, or at most, than 90 millions. Next, as to slaves.

A gentleman sitting near him, had, at the period to which he had just referred, of the passage of the equalizing land law, sold 85 slaves in families, at 300 dollars round: He had been assured by him, and by other gentlemen, equally well-informed, from other portions of the Commonwealth, that 150 dollars for each slave, taking them in families, would be a fair price at the present moment. This description of labour, then, has fallen one half, and lands more than a half, in very little more than ten years. In the estimate of the last, the tables supplied by the Auditor, comprehended \$26,500,000 for city and town lots; chiefly, for the value of those at Richmond, Petersburg, Norfolk, and Fredericksburg: A value dependent on the fluctuations of domestic and foreign trade. What was once its extent in this city, the metropolis of the Commonwealth, we all remember. What it is now, I know not; since commerce, that inconstant handmaid of fortune, has turned her helm from our ports to the favoured harbor of New-York. Wealth attracts wealth. Fortune not only withdraws her gifts from those who abuse, but from those who fail to use them: taking from those who have little, that which they cannot spare, to pour it into the lap of abundance. While we have been quarrelling about Internal Improvement, New-York has swallowed up the commerce of America. Driven from us by our unkindness, it has gone where it was invited by wiser councils.

There are fluctuations of the value of property, however, which no wisdom can elude or avert. The value of our land and labor depends on the value of the staple commodities which they produce; this on the demand for them at home, and abroad, and that again on physical and moral causes which no Constitution of Government, which man himself, cannot controul; on the seasons, in other countries, as well as our own, on the policy of other nations, on peace, on the varying events of foreign war. The act of Congress reducing the minimum price of the national lands, struck down, at a blow, the value of every landed estate in Virginia. The tide of wealth which set in from Europe to America during the wars of the French revolution, rolled back at the general peace which succeeded our last contest with Great Britain.

If this uncertainty of wealth operated uniformly, on all the interests of our Commonwealth, their relative proportion would not be sensibly disturbed by it. Such, however, is not its effect. The cotton, the tobacco, the grain, and even the grazing interest, are affected, in different degrees, by the same agents: and, although the natural tendency of the profits of stock, the rent of land and the wages of labour, in the same country, is to one level, it requires time to still the successive agitations of their varying values. In the interim, new causes are continually arising to delay their subsidence to one common level; and this principle, the truth of which is unquestioned, though constantly operating, may never accomplish its end.

But had wealth the necessary stability to serve the purpose of the proposed amendment, is taxation in any known system, a just measure of that wealth?

Taxation is the instrument, by which legislation draws from the private revenue of each citizen, his fair proportion of the public expenditure. It should be proportioned to his ability to pay it. It should, therefore, be drawn from his income, and not from his capital, except with a view that his income shall supply the call. His income cannot be reached, if at all, by expedient means; and wisdom suggests the propriety of taxing his expenditure, which usually bears a certain proportion to his income.

The constitutional power of another Government restrains the application of these principles to taxation in Virginia, under the authority of the State; and, in other respects, diversifies the action of our local system of public revenue.

The gentleman from Culpeper, (Mr. Green) has not told us how he means to combine the taxes of the people, with their numbers, in his compound basis of representation. Will he add the annual sum of the present taxes, to the numbers of the people, and dividing the aggregate of men and dollars, settle the value, at which a legal voter in any district may be computed? A friend has informed me that such is to constitute a part of the details of the proposed compound basis, and that the value of each vote in the Commonwealth, will be rated at about fifty-eight cents! Or if this shall shock the ears of the Convention, or the sense of the people, who may set a higher estimate on their rights, will gentlemen adopt what in practice, will lead to a similar result, the plan of South Carolina; and distribute the territory of this Commonwealth into two descriptions of election districts, one in reference to free white population, the other, to taxation as it now exists?

[Mr. Green explained, but in so low a tone of voice, that the reporter could not catch his language.]

Mr. Mercer regretted that he had been unable to hear distinctly the explanation of the gentleman from Culpeper, but from the few words which had reached him, he inferred it to be his intention to adopt the system of South Carolina, and to divide the State into two sorts of election districts.

[Mr. Green having changed his seat in the Hall, again rose for explanation. He explained it to be his plan to take the white population of the State and the population of each county. Apply the rule. Population gives to representation, in proportion to numbers. See the number of representatives required. In like manner, take the whole taxes of the State, and those of each county, if the taxes give the like rule for the county, add them together, and that is the rule.]

Mr. M. thought this plan would only serve to increase the difficulty. To what portion of a representative will Warwick with her annual taxes at \$500, and her white population of 620 persons, be entitled? The objection still applies, notwithstanding the explanation that a freeholder, or lawful voter of the Commonwealth, will be weighed in the same scales, with the taxes, he may chance to contribute to the wants or the caprice of the Legislature, and find himself balanced against the fraction of a single dollar.

Were a submission to such degradation, all that was required by this ingenious political composition of men and money, it would be possible, though it might be difficult to endure it patiently. But, is it possible to derive, from such materials, any equitable or stable proportion, or balance of political power, between the different sections, or interests, as they are called, of this Commonwealth, or, indeed, of any other, with which we are acquainted? I know its operation in South Carolina, said Mr. M. only so far as its details are disclosed in her Constitution. Let us turn to it. By this, it is provided, that sixty-two members of *the more numerous*, I will call it *popular* branch of her Legislature, shall be distributed among her pre-existing election districts, in number forty-four, from reference to their white inhabitants; and sixty-two among the same districts, from reference to "*the amount of all taxes raised by the Legislature, whether direct or indirect, or of whatever species, paid in each, deducting therefrom, all taxes paid on account of property, held in any other district, and adding thereto, all taxes, elsewhere paid, on account of property held in such district.*" To give effect to this principle of representation, it is farther provided, that there shall be an enumeration of the people once in every ten years, and that, in every apportionment of representation, which shall take place, after the first, "the amount of taxes shall be estimated from the average of the ten preceding years;" "and the first apportionment shall be founded on the tax of the preceding year, excluding from the amount thereof, the whole produce of the tax on sales *at public auction.*"

He had attended, Mr. M. said, the more closely, to these provisions, in order to ascertain, what portion to a House of one hundred and twenty-four members, would fall to the share of the city of Charleston. This city had, of the former House of Representatives of the State, including the parishes of St. Philips' and St. Michael's, fifteen members out of one hundred and twenty-four. The auction duties of South Carolina, there can be but little doubt, are paid chiefly, if not solely, in Charleston. They were not to be computed at all, in the first apportionment of representation, that of 1810; but the very exception, as well as the antecedent language of her Constitution, shews that they were to be reckoned, in every subsequent apportionment, founded on the taxes of the preceding ten years. They must have been computed, therefore, in 1820. The present representation of this city, in the House of Representatives of South Carolina, I have yet to learn; but if any part of it is founded on these auction duties, since her example is invoked to the aid of the amendment, in discussion, I ask if she is entitled to it on any principle which would not give to the citizens of Philadelphia, or New York, a like claim to representation, over and above their fair proportion to members in the Legislatures of their respective States? The extent of the auction duties annually collected in Charleston, is unknown to me: but the auction duties of Philadelphia, I believe, constitute a third of the entire revenue of Pennsylvania, whose State Government is sustained without any other tax whatever, except upon the dividends of her banks, and on collateral inheritances, devises and bequests. These taxes, together with her share of the annual dividends, accruing on her several road, bridge, canal, and bank stocks, make up the sum total of the public income, applied to the disbursements of a State Government, where neither a land nor a poll tax exists. More than a moiety of it arises in Philadelphia.

Similar views apply to New York. The auction duties levied in her great emporium, largely exceed a moiety of our State revenue, and are established and set apart for a special purpose, by an express provision of her Constitution.

The only tax we have in Virginia, analogous to this, is one on merchants' licenses; and both have a close affinity, in their principles and operation, to the impost duties of the United States. They are all levied at the marts of commerce,—all chargeable

upon the commodities which enter into that commerce. They are, consequently, all paid, neither by the importer nor the vender,—neither by the auctioneer nor the merchant,—who are but the collectors of the tax, and charge a profit on their labour. They are all paid, in fine, by the consumer, who, for the opportunity of paying them, this amendment would require of him to surrender, not only the price in money of the articles which he purchased, but a most undue and enormous advance of political power, to his superiors, the tax-paying merchant and auctioneer. Apply this amendment to the condition of Pennsylvania and New York, and their chief cities would govern those States. These new heads of a monied aristocracy, the auctioneers, who pay, by far, the largest share of the taxes to the State, would, in the several State Governments, far out-rank the regular merchant, whose principal dues pass through the Collectors of the Customs, to the Treasury of the Federal Government; and, consequently, neither augment his own political power, nor that of his neighbours, however large they may be, and actually are.

If the payment of a tax, gives a right to a proportionate share of the power which levies it, my constituents have a fair claim to representation in the Legislatures of New York and Pennsylvania, since they pay no small share of these auction duties.

Sir, said Mr. M. the salt tax of New York, a State excise, is also set apart, by her Constitution, for a special purpose. Being twelve and a half cents on the bushel, and the quantity made, about 1,200,000 bushels, it does not fall short of \$120,000 per annum, and being levied and collected on Lake Onondaga, near the town of Salina, it should entitle the inhabitants of that vicinity, to a very large portion of the political power of that great and flourishing State.

During the last war, we endeavoured to levy a similar tax in the counties of Washington and Kanawha; but with less success. Should the political weight of our several counties, be hereafter dependent on the amount of taxes they may severally pay, as the gentleman from Culpeper proposes, whatever the salt-makers may think of the renewal of that tax, the politicians and the people of those counties, might over-rule these objections, for the sake of governing the rest of the Commonwealth, by this newly-invented political power.

It must now be apparent, Mr. Chairman, that the district in which a particular tax is collected, may not be the district of the people by whom it is paid, and consequently that nothing would be more absurd than to rest the apportionment of political power on any such basis.

Indeed, the tax which is paid on a particular subject will have its locality, if I may be allowed the expression, determined, altogether, by the mode in which it is levied. The Supreme Court of the United States has defined a tax upon carriages, to be a tax on expenditure, and therefore an indirect tax, and to be the same in character, whether paid by the maker or the user of the carriage. Now, the maker and the user may live in the same Commonwealth many miles apart. If, however, the tax be paid by the maker, he would have credit for it; if by the user, it would inure to his benefit. To whom should the right of suffrage attach? If it attach to neither, it would seem to vest in the vehicle itself, and to suggest a similar difficulty to that propounded by Dr. Franklin, who, commenting on the case of a man, whose right to vote depended on the tax which he had paid on his ass, inquired after the death of the animal, and the consequent loss of the vote of his owner, whether the vote had been in the ass or the man.

It is impossible, Mr. Chairman, said Mr. M. to judge how far the rule of apportionment, adopted by South Carolina, would suit our condition, without knowing how it operates on her own. What is the character and operation of her system of taxation?

A similar rule is said to prevail in the apportionment of the Senators of Massachusetts and New Hampshire, under their respective State Constitutions. He had been informed, that no State tax had been levied in Massachusetts for seven years past, and he thought it highly probable that the same state of affairs, in the frugal Commonwealth of New Hampshire, would prevent a rule of apportionment, however offensive in theory, from exciting the public indignation. A rule, wholly inoperative, would be obnoxious to no one.

It can be readily perceived, that if applied to Pennsylvania, or New York, or even to Maryland, it would so far from restraining the political influence of the chief cities of these States, to a measure short of the just proportion of the number of their citizens in the scale of the population of their respective States, it would enable those cities by a combination of numbers and wealth to govern, without any control, beyond their corporation limits. And yet, this is one of the very evils against which the member from Chesterfield, the eloquent advocate of the amendment, is desirous to guard this Commonwealth: A Commonwealth, whose territory is so intersected by numerous rivers, that an overgrown market is not likely to spring up in its bosom.

Mr. M. said, he had considered these imperfections of the basis of representation, submitted by the amendment, arising from the nature of taxation, considered as an

instrument for raising any given revenue required by the exigencies of the Commonwealth.

But if these exigencies shall vary between different periods of time, how unstable is this basis, and especially if the pressure of the public burthens shall grow more and more unequal, as they grow or decline in weight.

In Maryland there is no State tax: the expenses of her Government are defrayed out of the income of a public capital already acquired. The revenue of the two great canals of New York, the work of but a few years, reaches already near a million of dollars, and will shortly release that Commonwealth, which has now neither a land nor a poll tax, from the necessity of imposing any tax whatever on her citizens.

Such a principle of representation, as that, for which our opponents contend, would induce, under such circumstances, the imposition and distribution of taxes for the sake of power merely. On the plan of Carolina, half the political power of the State might be secured by the exercise of very little ingenuity, to a minority of the election districts, and with it the means of preserving it forever in the same hands.

We have sought as yet in vain to secure from misapplication, and to prescribe the use of the two great funds of the Commonwealth. If the new Constitution shall be silent on this subject, what will prevent a majority of a future Legislature from applying them to reduce the pressure of the taxes on one portion of the Commonwealth, with a view to its Government in all other respects, by a minority of the people, or those who lead such minority? Those funds are abundantly sufficient for any such purpose, and the amendment, if adopted, will furnish the opportunity so to abuse them.

Not only would every reduction of the taxes which affected their relative pressure affect the proposed apportionment of representation, but every augmentation of them.

In this view of the subject a new principle requires to be developed. A considerable augmentation of revenue cannot often be effected without increasing particular taxes on those subjects already taxed, which will bear augmentation, nor sometimes, without adding new subjects to the existing list of taxes.

War inevitably gives rise to both these necessities, by reducing or suspending some branches of private revenue, and supplying others, before unused or unknown.

The burthen of sustaining a foreign war, it is true, has been cast by the Federal Constitution upon another Government; but it cannot be forgotten, by any member of this Convention, that it had been found necessary to double the revenue of the Commonwealth during the late war, and to incur a considerable debt for its defence, part of which remains yet unpaid. Can any man venture to predict, that a similar necessity will not again arise? Should he do so, would this Committee confide in the prediction: and found a provision in our Constitution upon it? No practical Statesman will believe that to be impossible which has actually happened, or reject the council which would provide for its recurrence.

Should an attempt be made to remedy the inequality of taxation, arising from war, or national distress, by averaging with a view to future representation, the taxes of a given period, according to the scheme of South Carolina: the effect of any war which varies the proportions of the public burthens, borne by the citizens of the same Commonwealth, will subsist in their representation, long after peace shall have been restored, and the inequality shall have ceased.

A review of our own system of taxation, both before and since the formation of our present Constitution, would supply all the facts necessary to sustain the positions I have assumed.

Prior to the war of 1756, called in Europe the Silesian war, from its object, and the seven years war, from its duration, and in America, the French war, from the foe whom it brought upon the western frontier of this Commonwealth, the only revenue of Virginia had been derived from a poll tax. The first land tax was laid in 1777, and was an *ad valorem* tax, the same in amount with that upon slaves—and these were then the only subjects of taxation. To these, before the last war, had been added taxes on horses, ordinaries, merchants' licenses, and law process.

The last war not only required a large augmentation of the taxes, on all these subjects, but the addition of a number which I will not fatigue the Committee by enumerating. Since the war the extraordinary subjects of taxation, have been released, but the pre-existing proportions of tax on the old subjects has not been restored. Allow me briefly to run over these changes with the date of their occurrence. In 1809 the land tax was 43 cents on the hundred dollars, or supposed value, according to the act of 1787. From 1816 to 1819 the land tax was 75 cents on the hundred dollars. In 1820 it was reduced by the new equalizing land law, the price paid by the West, for equalizing the representation of the Senate, to 12½ cents for every hundred dollars of actually assessed value. In 1821 it was brought down to 9 cents upon the same estimate; at which it remained till the last year, when it was again reduced to 8 cents,

more than fifty per cent of the tax of 1820, having been struck off in eight years, and the land tax of 1829 made to bear to the land tax prior to the last equalizing land law an apparent ratio of one only, to more than 9.

In 1809, before the war, the tax on slaves above twelve years of age was 44 cents; in 1815 it was raised by the war to 80 cents, in 1819 reduced to 70 cents, in 1821 to 53 cents, in 1828 to 47 cents, and the last reduction brought it down to 40 cents, or 4 cents less than its amount prior to the war.

The tax on horses for several years prior to the last war was 8 cents. In 1815 it mounted up to 20 cents. In 1819 it was 18 cents; in 1821, 13½ cents; in 1823, 12 cents, and it is now 10 cents, or twenty-five per cent. more than it was prior to the war.

The war besides adding more than forty specific taxes to the three I have enumerated, raised essentially the proportions between those of ordinary use.

It greatly increased the ratio of the land and horse tax to the slave tax. The relative product of the taxes on lands, slaves and horses in 1809, was 141,000; 90,000, and 33,000 respectively. In 1816, 233,000; 161,000, and 40,000. In 1829, 175,000; 97,000, and 33,000 respectively. When the revenue from these three subjects stood highest, that is, after the equalizing law took effect in 1819, their proportions were 274,000; 163,000, and \$52,000. Their proportions in the last year were 175,000; 97,000, and \$33,000.

The land tax, it will be seen, has been gaining on the amount of the slave tax since 1809. Since when \$34,000 has been added to the gross amount of the land tax, and \$7,000 to the amount of the slave tax.

While these variations in the total amount of the taxes levied on the old subjects of taxation, have not been strongly marked, except during the continuance of war, the proportion paid by the several counties of the State have been more diversified.

The taxes of Loudoun paid into the State Treasury, in 1815, amounted to the sum of \$12,885. Those of the county of Warwick to \$1,285, or very near a tenth part of that amount. In each of the years of 1823 and 1824, Warwick paid only \$500 and Loudoun \$9,500. In the last year, Warwick paid \$526, and Loudoun \$10,507. Thus the proportion of taxes actually paid into the Treasury, by these counties which have, notwithstanding, an equal representation in the House of Delegates, was, in 1815, ten to one; and is, now, very near twenty to one. The proportion having varied in the ratio of very near two to one.

During the last war, nearly fifty specific taxes were added to three subjects of ordinary State revenue. Among the former were excises on salt, iron, lead and manufactured tobacco, objects all of limited production, and while consumed every where, taxed only where made.

They suggest one view of this subject which ought not to be omitted. It is that by resting the representation of the people of this Commonwealth on the basis of taxation and numbers, we place their relative political power over the operations of their own State Government, under the control of the Congress of the United States.

To develop this argument, it is necessary to refer to the Federal Constitution which gives to the National Legislature exclusively, the power of imposing duties on foreign imports, and a concurrent authority with the several States to tax every thing else within their limits.

Should Congress prohibit public auctions of foreign goods, as they have been earnestly entreated to do by the resident merchants of all our great cities, what would become of the revenue of New-York, Pennsylvania, and South Carolina, from this source? And should the revenue disappear, what of that portion of the representation of Charleston derived from the auction tax? May it not be said that those States who tax a particular mode of selling foreign commodities immediately after they are landed, while they are expressly debarred from taxing their importation, trench more directly on the powers of the Federal Government than that Government has done, upon the natural distribution of labour and capital within the several States by the imposition of a tariff for the encouragement of domestic manufactures?

Nor is it the *direct* action of the fiscal regulations of the United States, in particular branches of State revenue, to which I singly allude: the whole system of federal taxation exerts an indirect but constant control over all the subjects which a State can tax. Were the United States, for example, to repeal the 20 cent duty on salt, what would become of New-York excise on that commodity, an excise which enhances its price, not only to the people of that State, but of the Western counties of Pennsylvania and Virginia?

I trust, said Mr. M. that I need not adjure the Committee to exclude, if practicable, the action of the General Government, whether direct or indirect, on the representation of the people of Virginia in the Legislative Department of their State Government.

Had such a basis of representation obtained in the Federal Legislature, in lieu of federal numbers, what now would be the relative power of New-York, to the rest of the Union; and of the city of New-York to the rest of that great commercial State.

The duties there paid would overturn every just balance of political power, and overwhelm, in the vortex of a monied aristocracy, the liberty and happiness, not of that city only, but of the whole Union.

Before Mr. M. concluded his remarks, the Committee rose, and the House adjourned to meet to-morrow, at 11 o'clock.

THURSDAY, NOVEMBER 5, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Lee of the Episcopal Church.

Mr. MERCER resumed:

Having endeavoured, with what success it is for the Committee to determine, to shew that the basis of representation proposed by the gentleman from Culpeper, (Mr. Green,) if practicable, is unstable, unjust, and inexpedient, I beg leave to recur to the original resolution of the Legislative Committee, in order to demonstrate that it founds the representation of the people, on its only proper basis.

This course I deem the more necessary, since the friends of the amendment have sought to sustain it, rather by opposing the basis contained in the resolution, than by enforcing the justice, or expediency of the amendment itself. Their reasoning has shewn, if it has proved any thing, that the entire slave population of the State, or three-fifths of it at least, should be computed in any new apportionment of representation which shall be made.

The resolution asserts, that this apportionment should have reference exclusively to the numbers of the free white population of the Commonwealth.

Referring to free white population, alone, the Legislative Committee have designed to reject any computation whatever of slaves. Although no gentleman has so far offended the public sentiment in terms, as absolutely to confound slaves with freemen, yet in their arguments, in favour of a compound basis, they have laid great stress on the protection which a representation of slaves would afford to this species of property.

The gentleman from Chesterfield, (Mr. Leigh,) has gone so far as to urge the computation of the slave population, in whole or in part, on grounds of authority, of justice, and of expediency.

His leading authority is deduced from the articles of "Confederation and perpetual Union" among the States, which gave place to the present Constitution of the United States, wherein, three-fifths of the slave population are added to the white, to compose a standard of *direct taxation* and representation.

One of my purposes is to shew that these authorities are inconclusive in themselves, or inapplicable to the present question.

The honourable member insisted on a former occasion, that the articles of Confederation did actually authorise a computation of three-fifths of the slave population of the South. Had this been true, it would not have warranted the use of the fact as an authority in fixing the basis of representation in the Constitution of Virginia. The articles of Confederation formed a compact, not between individuals, but sovereign States, who regarded themselves as mutually independent of each other. This compact, like a treaty, could be ratified, only by the express assent of all the parties to it; which was not obtained, until the accession of Maryland, in March, 1781. In the Congress, which that compact provided, for the exercise of the authority of the United States, perfect equality of power subsisted among the States. The sense of a part indeed, was to govern the whole body, but this sense was taken by the votes, not of individuals, (any one, or several of whom, might represent a State) but of States, each State having one vote and one only. As the articles of Confederation could be ratified, so, they could be altered, or amended, only by the concurrent assent of all the States who were parties to them.

No rule of pecuniary contribution, in such a Government, for the power to tax did not exist, could therefore, have the remotest relation to any basis of representation whatever. The States were expected to contribute to the common expenditure according to their respective ability. Their representation was equal. The 8th of those articles, provided a common treasury, and required it to be supplied, by the several States, in proportion to the estimated value of all the lands granted in each State, with the buildings and improvements upon them. Until 1781, however, this like all the other articles of Confederation, had no validity whatever.

In the interim, the revolutionary Government sustained itself, by loans, and by the issue of paper money, till from the excessive issue of this paper, it lost all value, and ceased at length to circulate.

The authors of the Confederation discovered, that they had not the means of ascertaining the value of all the real property of the several States. Adam Smith, had informed them, that it took the Emperor of Germany, more than half a century, to complete a survey, of one only of the States of his dominions. The present day would add to this information the vast time consumed in the late triangular surveys of France and England. In Virginia, alone, it would then have taken several years, to have gone, with tolerable accuracy, through such an assessment as the 8th article of Confederation demanded. Amidst these embarrassments, and the alarm of national bankruptcy, it was proposed to substitute, as the standard of fiscal contribution by the States, a computation of the numbers of the people, for the actual valuation of all their estates. A new difficulty here arose, as to the proper subjects of such an enumeration. Whether it should be restricted to the free white population alone, of the several States, or comprehend the slaves also? The object being to measure the ability to pay, the South, naturally enough contended, and with truth, that their slaves were not regarded in their institutions of civil polity, as persons, but as property; and ought not to be enumerated. The North insisted on the other hand, that whether persons, or property, they subserved the end of other labour, and adding to the wealth of the community, should be counted in that estimate of the relative ability of the States, to contribute to the common treasury, of which it was proposed to make *numbers* the common measure. The discussion of this subject, in the Congress of the Confederacy, terminated in a vote to recommend it to the several States, to amend the articles of Confederation, by substituting, for the rule of apportionment, therein provided for revenue only, a triennial enumeration of the whole number of white, and other free citizens, with three-fifths of all other persons, except Indians, not taxed.

In the decision on this recommendation, in April, 1783, it was carried by ten votes out of twelve: Rhode Island being opposed to it; New York equally divided, Mr. Floyd voting for it, and Mr. Hamilton against it; and Georgia being absent. I am thus particular in relation to this vote, for reasons which I will, hereafter explain. The Legislature of Rhode Island persevered in the opposition begun by her delegates in Congress; and Virginia, after giving, retracted her assent; so that the recommendation totally failed. This state of things continued till the Convention assembled which framed the present Constitution of the United States, when the same topic of discussion and of disagreement was renewed. Nor was it easily adjusted in this body, as intimated by the member from Chesterfield, (Mr. Leigh.) No proposition which agitated the Convention, consumed so much of its time. As early in its deliberations as the 29th of May, 1787, it appears on the Journal of the proceedings of that Assembly, among the resolutions submitted by Governor Randolph of Virginia, in this form, "that the right of suffrage in the National Legislature, ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other may seem best in different cases."

The following day Mr. Hamilton moved to alter this resolution, so as to cause it to read, "that the right of suffrage in the National Legislature, ought to be proportioned to the number of free inhabitants."

On the 11th day of June, it was moved by Mr. King of Massachusetts, and seconded by Mr. Rutledge of South Carolina, "That the right of suffrage in the first branch of the National Legislature, ought *not* to be according to the rule established in the articles of Confederation;" [the rule of equality among the States, as we have seen,] but according to some "equitable ratio of representation."

The same day, along with several other amendments of this resolution, it was moved by Mr. Wilson of Pennsylvania, and seconded by Mr. C. Pinckney of South Carolina, to add after the words "equitable ratio of representation," "in proportion to the whole number of inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes, in each State."

I will not weary the attention of the Committee, by reading all the references I have made to this volume, the Journal of the Federal Convention, with a view to the development of its course, in relation to these resolutions.

After passing and repassing through various Select Committees, and being frequently debated in Committee of the Whole, the proposition having assumed the shape in which it now stands in the Federal Constitution, was apparently settled on the 11th and 12th of July, by a vote of seven States to three, against striking out the "three-fifths" of the slave population. Had this motion prevailed, it would have caused *all* the slave population to be counted, as Delaware at first, and South Carolina and Georgia to the last, perseveringly insisted. By a motion on the second of those days, the attempt was renewed to produce this result, when Maryland, Virginia, and North Carolina, voted once more *against*, and South Carolina and Georgia, *for* computing the entire slave population.

What now becomes of so much of the authority relied upon by the gentleman from Chesterfield, as was derived from the supposition that the principle of computing three-fifths of the slave population, made part of the articles of Confederation; that, the slave-holding States were united in its support in the Federal Convention; and that it carried such conviction, to every mind, that it was interpolated in the new Constitution without resistance? The pages of this volume, [the Journals of the Convention,] from the 75th to the 161st, manifest the contrary. The love of power did not, then, tempt Virginia to consider her slaves as parties to her social compact—as persons and not property. And is she, now, prepared to go to Washington, or to Boston, to learn the civil and political condition of the population, within her own limits? Whether it shall be regarded in her own councils, as property, or as a “peasantry,” fitted to rank with “the free people of the West?” to use the language of the gentleman from Chesterfield (Mr. Leigh.)

Sir, said Mr. Mercer, is not the slave under our laws, as much an instrument in the hands of his master, as the wagon and team of the mountaineer? True, his life is protected from violence and his person from cruelty. So does the common law of England, which is ours, protect the horse and the ox from wanton injury. But the slave, like either, is by our law, mere property: and, as such, may be to-morrow shipped by his master to Cuba, or to Brazil. He may be smuggled into the United States from Africa, in violation of law, and exported again as an article of merchandise; having a known value in the market, and being the subject of frequent and profitable speculation. I speak not of the reason of the law, but of the legal fact.

Do not those who apprehend most danger to this species of property, from innovation, consider the slave as property, the *subject* of our social compact, not a *party* to it? What said New Jersey, to the Confederation, in the war of the revolution? “That slaves should be brought into the account,” in the “requisition for land forces” to be supplied by the States, to the defence of the Union. She sustained this demand, by reasons, at least, as specious as those which we have just heard, for making this particular property the basis of representation. “Should it be improper, for special, local reasons, to admit them in arms for the defence of the nation, yet we conceive,” says their memorial, “that the proportion of forces to be embodied ought to be fixed according to the whole number of inhabitants in the State, from whatever class they may be raised. If the whole number of inhabitants in a State, whose inhabitants are all *whites*, both those who are called into the field, and those who remain to till the ground and labor in mechanical arts, are estimated in striking the proportion of forces to be furnished by that State, ought even a part of the latter description to be left out in another? As it is of indispensable necessity in every war, that a part of the inhabitants be employed for the uses of husbandry and otherwise at home, while others are called into the field, there must be the same propriety that persons of a different colour, who are employed for this purpose in one State, while whites are employed for the same purpose in another, be reckoned in the account of the inhabitants.” The prayer of this memorial received, in 1778, the sanction of three States, while one was divided, and six voted against it.

The argument of New Jersey in favor of a computation of slaves in distributing the personal burthens of a common war, bears a striking resemblance to that which the member from Chesterfield has so forcibly urged on the present occasion, and sustained by a comparison of the “peasantry” of the West, with the slaves of the East.

The answer to both arguments is the same. That, however regarded *elsewhere*, slaves, in Virginia, are considered as property, and property only. But if, as property, they are exempted, at the expense of the community, from obligations which would be onerous, not upon themselves, but their master; so as property merely, should they not add to the weight of a political power, of which they cannot and should not directly partake; and which is claimed for his benefit alone, to the public injury.

If, therefore, the Constitution of the United States has supplied a different rule, it should be remembered that it was founded in a compromise of principles, for the sake of uniting States, otherwise sovereign and independent, by a National Government of limited power. Its introduction, even there, as a principle of representation, was evidently founded on its prior assumption, by a majority of the Congress of the Confederation, as a principle of pecuniary contribution among the States. It is a price paid, by the small States, for their equality of power, in the Senate; and has long ceased, as was early anticipated, to be any security to the property it is supposed to have been originally designed to protect from unequal taxation. In the last House of Representatives, the proportion of the members from the slave-holding, to those from the non-slave-holding States, was 91 to 122. How that ratio will be augmented by the approaching Census, I need not intimate to the Committee.

At this point of my argument, it is proper, to allay the apprehension which has so often been expressed in this debate, that, to adopt the basis of representation recommended by the Legislative Committee for our State Government, would put to hazard

that portion of representation, in the Federal Legislature, derived from a computation of three-fifths of the slaves of the Commonwealth.

This attempt upon our fears would seem to imply, that representation, under our present State Government, is founded, in part, on a computation of slaves. That of the Senate we know to have been apportioned in 1817, as nearly as practicable, to the free white population of the State; a concession, compatible with the existing Constitution, because made under it, and paid for, by doubling the land-tax of one portion of the State, and proportionably reducing that of another.

The origin of the House of Delegates was ably developed in an early stage of this debate, by my learned friend from Brooke, (Mr. Doddridge.) In the work of a venerable member of this Convention, "Marshall on the Colonies," it will be seen that the first representation of the people of this Commonwealth was of "settlements," then seven in number. The Assembly which their delegates formed was called the "House of Burgesses," from the names of those settlements, as Elizabeth City, James City, Charles City, which names, by a singular adherence to usage, they retained, as they now do, after those settlements were, for judicial purposes, erected into counties.

Representation in the House of Burgesses, therefore, preceded the existence of counties, as the counties did the existence of slavery; for that calamity was introduced among us by the Dutch, after the origin of county representation; that representation which has ever since existed in the House of Delegates.

In the Constitution of this branch of the General Assembly, therefore, slavery forms no original feature, and to change its foundation by an amendment, which shall derive its effect from periodical enumerations of the people, could expose the State to no loss of power in the councils of the Union.

If otherwise, what may be said of that very amendment for which these gentlemen have so zealously contended, and which proposes the mixed basis of *white* population and taxation? Would not this basis, unless explained by their arguments, be obnoxious to the very same fears which they labour to awaken? Unless indeed, if it prevail, their argument shall go abroad as a part of the Constitution itself.

But if our examples shall endanger a political influence, which some gentleman compute at 2-11ths of our present weight in Congress, and others, more correctly, at seven out of the twenty-two members, we have at present in the House of Representatives, what shall be said of that, which is supplied, by so many other States, interested like us, and some of them more deeply, in retaining this feature of our Federal Representation? Why has no slave-holding State, save Georgia alone, engrafted this principle on her Constitution of Government? Neither Louisiana, whose climate and productions approach so near the tropical sun, which has stained the complexion of Africa, nor Missouri, who formed her Constitution, amidst a moral and political excitement which might have excused such alarm, have felt its influence.

And if there is any truth in the origin of it, on the present occasion, why let me ask, did not the Hartford Convention, when it sought to exact a surrender of this power, from our fear of disunion, appeal to the example of every slave-holding State, except Georgia, to enforce their pretensions?

We have, Mr. Chairman, in truth, a substantial, and trusting as I do, to the obligation of solemn compacts, though recorded on mere parchment, a permanent safe-guard, for this portion of our political weight, which, though I deplore its origin, I neither deprecate, nor am prepared to yield, to any claims, whatever. This safe-guard is to be found, in that provision of the Constitution which, without naming expressly, confers this power, and in another clause of the same instrument, which provides that no alteration or amendment of it, shall take effect, unless with the sanction of three-fourths of the States.

To propose an amendment, which shall deprive Virginia of this power through the National Legislature, will require, by this clause, the concurrence of two-thirds of both branches of that body: and in one of them the slave-holding States have, now, inclusive of Delaware, twenty-four out of forty-eight members.

But it is, to the sanction, required of the States themselves, to any change of the Constitution, that I look, with absolute confidence for the preservation of this power.

At present any seven of the twelve slave-holding States could defeat any amendment which threatened its existence.

Looking forward to the admission of the territories of Florida, Arkansas and Michigan into the Union, I see this security confirmed by the addition of two slave-holding States, making the total number fourteen, exclusive of Delaware, which I do not count, because she is not likely long to continue of that number. Glancing to a futurity much more remote, and allowing for two additional States to the North of Illinois and Missouri, still the ratio between the number of the slave-holding and non-slave-holding States will be as fourteen to fifteen. If, in the madness of future conquest, for I never desired the annexation of Canada, to this Union, the whole North American provinces of the British Empire shall fall to our lot, and Upper and Lower Canada supply two States, in addition to Nova Scôtia and New Brunswick, the pro-

portion will be not less than fourteen to nineteen, and nine States of the fourteen, may prevent any change of the Constitution prejudicial to the rights and interests of the holders of this property. Let the Union, therefore, be extended, from Florida, to the northernmost limits of our continent—Let the States who compose it, be animated by what policy they may, a combination among them, to the prejudice of the political power of the South, so far as it rests on the principles of the present Constitution, can never be availing while that Constitution remains inviolate. The resources of the common Government may be applied to mitigate the evils of slavery by the aid of colonization, but its power can never be applied to endanger the peace of those who suffer from its existence. While the *number* of slaves, to the South, forbids their emancipation, without their consequent removal from the Commonwealth, no wise man can desire *its* augmentation. Whether it can be reduced in a mode consistent with the claims of justice and humanity, we are not now called upon to decide. I am on this subject no enthusiast; I look ever to the attainment of just ends by expedient means. These I am ready to discuss on any suitable occasion, in a temper to make every allowance for the rights of private judgment in others, and with a solicitude, which no consideration can sway, for the peace and happiness of the Commonwealth.

The eloquent member from Hanover, (Mr. Morris) in his fervid address to the Committee, acknowledged that he entertained no apprehension of sudden emancipation from any change of the present Constitution. Let my honorable friend then, and I apply this language to him, in the sincerity of a heart that never forgot a benefit, return to its scabbard the bloody sword which his fancy drew in the close of his animated and able speech. Having no terrors for him, it has none for me—The property of the master will be secured by the sad necessity from which it derives its existence. No gentleman has proposed that slaves shall be numerically represented. As property, is it better entitled to representation than any other estate in the Commonwealth? If so, on what is that title founded? Their value? Why not compute lands or horses? This argument I have already considered in relation to the amendment, by which it was proposed to combine taxation with population as a basis of representation. Were values to be regarded as a basis of representation, should we not compute the mineral treasures of the mountains of Virginia, which though latent, await but the hand of enterprise, to develop their extent, and to fit them for human use? As well might a British statesman propose to augment in the Parliament of that country, the representation of South Wales, whose naked mountains, barren in surface, as the Highlands of Scotland, have begun since the commencement of the present century to contribute to the wealth of Great Britain, as ample stores as the richest counties of England.

Before I leave the inquiry, whether slaves should be admitted to representation, regarded either as persons or property, an authority confidently urged by the gentleman from Chesterfield, remains to be considered—the fifty-fourth number of the *Federalist*, or the letters of Publius, addressed to the American people after the formation, and prior to the adoption of the Constitution.

While he should ever entertain not only the most profound, but the most grateful respect for the very eminent authors of that work, and regard the work itself, as a rich depository of political science, and an honor to American literature, it is proper to remark, that it was, in its character, controversial.

He who studies it with attention, will perceive that it is not only argumentative, but that it addresses different arguments to different classes of the American public, in the spirit of an able and skilful disputant before a mixed assembly. Thus, from different numbers of this work, and sometimes from the same number, may be derived authorities for opposite principles and opinions. For example, nothing is easier than to demonstrate by the numbers of Publius, that the Government, which it was written not to expound merely, but to recommend to the people, is, or is not a National Government; that the several State Legislatures may arraign at their respective bars, the conduct of the Federal Government, or that no State has any such power. I have in debate used this work for some one of these and other purposes, while my adversary has met me with passages from it alike genuine, which overturned my positions.

The authors undertook to defend every part of a Constitution, to which two of them at least, had in the Convention offered amendments that were rejected, and the whole of the numerous articles, of which, no man in America, of independent judgment, then approved. It was the offspring of mutual concessions, of compromise.

With these preliminary reflections on this very able work, which I trust will be regarded as compatible with the veneration and gratitude I cherish for its authors, I beg leave to turn the attention of the Committee to the particular number, quoted as authority by the member from Chesterfield, to prove not that three-fifths of the slaves of the several States are computed as a part of the basis of representation in the House of Representatives, but that, of right they should be so computed.

“The next view,” says the author of this number, who appears in the volume I have, to have been Mr. Hamilton, “which I shall take of the House of Representa-

tives, relates to the apportionment of its members among the several States, which is to be determined by the same rule with that of *direct taxes*." In the succeeding clause, the author, who had both in the Old Congress voted against this rule, and in the Convention submitted a different one, qualifies the approbation of the rule which his present purpose requires him to sustain, by a peculiar form of expression. "It is not contended," he says, "that the *number* of people in each State *ought not to be the standard* for regulating the proportion of those who are to *represent the people* of each State." He does not, therefore, impugn the identical principle for which we at present contend; and which, on another occasion, he had maintained. He proceeds as follows: "The establishment of the same rule," that of the Constitution, "for the apportionment of taxes," will be as little "contested; though the rule itself in this case," that is as to taxes, "*is by no means, founded on the same principles*. In the former case, the rule is understood to refer to the *personal rights* of the people, with which it has a *natural and universal* connexion. In the latter, it has reference to the proportion of wealth, of which it is, *in no case*, a precise *measure*, and in ordinary cases a *very unfit* one. But notwithstanding the *imperfection* of the rule, as applied to the relative wealth and contributions of the States, it is evidently the *least exceptionable among those that are practicable*;" and he adds, what the Journals of the Convention, now published, as well as the antecedent conduct of Rhode Island, New York, and Virginia, must be allowed at least to qualify to some extent, "that it had too recently obtained the general sanction of America, not to have found a ready preference with the Convention."

In another part of the same essay—"It is agreed," says the author, "*on all sides, that numbers* are the best scale of wealth and taxation, as they are the *only proper scale of representation*." The last is the doctrine for which the advocates of the resolution contend, against the doctrine of the amendment, which would found *representation on numbers and taxation* combined.

[Mr. Leigh rose and said, the gentleman would much oblige him by stating who was the author.]

Mr. Mercer said, the paper which he had read, had prefixed to it the name of Mr. Hamilton.

[Mr. Doddridge rose and said, that the paper from which the extract had been read, was attributed in some of the editions of the Federalist, to Mr. Jay.]

[Mr. Madison then rose and said, that although he was not desirous to take part in this discussion, yet under all the circumstances he was, perhaps, called on to state, that the paper in question was not written by Mr. Hamilton or Mr. Jay, but by the third person connected with that work.]

Mr. Mercer said, this volume, the third of an edition of "Hamilton's Works," the editor of which he supposed had derived his key to the names of the authors of Publius from a manuscript of Mr. Hamilton which he saw many years ago, in the possession of the late Richard Stockton, an eminent statesman of New-Jersey, would constitute, he hoped, an apology for the error into which, in common with many editors of this work, he had been betrayed; as he now perceived that the number of Publius, which he had quoted, was the work of a distinguished member of this Convention.

Although not able to avail himself of this paper, for the precise purpose which he had proposed, he was glad it came from such a source; from the venerable Chairman of the Legislative Committee, who had already yielded his support to the resolution in debate.

For the opinions expressed by Mr. Hamilton, the author of more than a moiety of these very able essays, in relation to the present topic of inquiry, Mr. M. said he would refer this Committee, not only to his votes in the Congress which preceded, as well as the Convention which made the Constitution, but to a prior number of those admirable essays written in favour of its adoption, and which bears his name.

"The right of equal suffrage among the States," Mr. Hamilton says in the 22d number, "is another exceptionable part of the Confederation. Every idea of proportion, and every rule of fair representation, conspire to condemn a principle, which gives to Rhode Island an equal weight in the scale of power with Massachusetts, or Connecticut, or New-York; and to Delaware an equal voice in the national deliberations, with Pennsylvania, or Virginia, or North Carolina. Its operation contradicts the *fundamental maxim of Republican Government*, which requires that the *sense of a majority should prevail*." The conformity of this language to that of the friends of equal representation in this Convention, is too apparent to need any other proof of it, than would arise from substituting the county of Warwick for "Delaware," and Frederick, or Loudoun, for "Pennsylvania," or "New-York." How far the answer to this reasoning, which Mr. Hamilton puts in the mouths of his adversaries, speaks the language of our opponents, I leave it to the Committee to judge.

"Sophistry," says Mr. Hamilton, "may reply that sovereigns are equal, and that a majority of the votes of the States, will be a majority of confederated America."

For the words "sovereigns," and "State," I have only to insert the word "counties," in behalf of those who desire no change of the present Constitution, and for "confederated America," the people of Virginia.

I close this quotation with Mr. Hamilton's rejoinder, which needs no commentary. "But this kind of logical legerdemain," he adds, "will never counteract the plain suggestions of justice and common sense. It may happen that a majority of States is a small minority of the people of America, and two-thirds of the people of America could not long be persuaded upon the credit of *artificial distinctions* and *syillogistic subtleties*, to submit their *interests* to the management and disposal of one-third. The larger States would, after a while, revolt from receiving the law, from the smaller. To acquiesce in such a privation of their due importance in the political scale, would be, not merely to be insensible to the love of power, but even to *sacrifice the desire of equality*. It is neither rational to expect the first, nor *just to require* the last. Considering how peculiarly the safety and welfare of the smaller States depend on union, they ought readily to renounce a pretension, which, if not relinquished, would prove fatal to its duration."

The Committee will readily excuse my substitution of the words of this able and eloquent writer, for any language that I could invent to express the same ideas. Such a course is the more expedient for my purpose, since it affirms all the truths which I labour to sustain, by the appeal of a statesman and patriot of the revolution to the people of America, in support of the principles, for which he had contended, as well in arms, as in council.

That he did not, any more than his equally patriotic associates, confound taxation with representation, as has been so often done in the course of this debate, a passage, which I beg leave to offer to the Committee from the preceding number of this able work, sufficiently manifests.

"The principle," says he, "of regulating the contributions of the States, to the common treasury, by quotas, is another fundamental error of the Confederacy." "I speak of it now, solely with a view to *equality* among the States." By *equality*, it will be seen, that he does not mean the payment of equal sums, by equal numbers, but in *equal*, or just proportion to the respective abilities of those who are required to pay them for the common benefit of all. "Those who have been accustomed to contemplate the circumstances, which produce and constitute national wealth, must be satisfied that there is no *common standard*, or barometer, by which, the degrees of it can be ascertained.—Neither the *value of the lands* nor the *numbers of the people*, which have been successively proposed, as the rule of State contributions, *has any pretension to being* a just representative." "Let Virginia be contrasted with North Carolina, or Maryland with New-Jersey, and we shall be convinced that the respective *abilities of those States*, in relation to revenue, bear little or no analogy to their comparative stock in lands, or to their comparative population. The position may be equally illustrated, by a similar process between the counties of the same State. No man acquainted with the State of New-York, will doubt, that the active wealth of King's county bears a much greater proportion to that of Montgomery, than it would appear to do, if we should take either the total value of the lands or the total numbers of the people as a criterion.

"The wealth of nations depends upon an infinite variety of causes. Situation, soil, climate; the nature of the productions; the nature of the Government; the genius of the citizens; the degree of information they possess; the state of commerce, of arts, of industry; these circumstances, and many more too complex, minute, or adventitious, to admit of a particular specification, occasion differences hardly conceivable in the relative opulence and riches of different counties. The consequence is, that there can be no common measure of national wealth; and, of course, no general or stationary rule by which the *ability* of a State to pay taxes can be determined. The attempt, therefore, to regulate the contributions of the members of a Confederacy, by any such rule, cannot fail to be productive of *glaring inequality and extreme oppression*.

"There is no method of steering clear of this inconvenience, but by authorising the National Government to raise its own revenues in its own way.

"It is a signal advantage of taxes on articles of consumption, that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed—that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that 'in political arithmetic, two and two do not always make four.'"

May I not now affirm, without a presumptuous impeachment of the authority of the able authors of this vindication of the Federal Constitution, that whatever concessions it may contain of expediency or justice, to the Union of the States, they have not sanctioned the doctrines of our adversaries: that slaves are regarded as property by *our* laws, and as such have no other title to representation, than any other description of property in the Commonwealth.

The resolution, which I have undertaken to sustain, alike excludes a representation of counties. Such is the present representation in the House of Delegates, and its glaring inequality is one of the leading causes of this Convention. Although no voice has been heard in this Committee to vindicate this inequality, and the proposed amendment is as much at war with its continuance as the resolution itself, yet those who are opposed to any change of the present Constitution must be regarded as disposed to tolerate, and bound to defend it. It is equally incumbent on the advocates of the resolution to advert to its extent, and its operation on the principles for which the friends of a Convention have contended.

There are at present in this Commonwealth, 105 counties, entitled each to two Delegates, and four boroughs, having by law separate representation, entitled each to one Delegate. The House of Delegates consists, at present, therefore, of 214 members, of which 108 are a majority. Fifty-four of the counties of Virginia may, therefore, return such a majority. Omitting with all the boroughs, Williamsburg having a population of only 536 white inhabitants, and the small counties of Logan, Alleghany, and Pocahontas, which have been created since the last Census, this majority may be supplied by 180,000 of the 603,000 white inhabitants of the Commonwealth. It follows, therefore, that a minority of much less than a third of the people of Virginia, may govern the other two-thirds.

Of the thirty-nine counties below the Blue Ridge, selected to make this proportion, five have fewer than 2,000 white inhabitants, each; one has but 620, and another but 1,017.

Of the fifteen beyond that mountain, which I have added to the former, the smallest has a white population of very near 1,800, and that is the only one which has a white population below 2,000 in number.

In addition to the six counties having each less than 2,000 white inhabitants, there are eleven counties, whose population is known, which have between 2 and 3,000 only, and of these, there are but two West of the Blue Ridge.

On the other hand, there are thirteen counties, which have each more than 10,000 white inhabitants, of which, all but one, lie either West, or on the Eastern face of that mountain; and, of those, three, having each more than 16,000, lie connected together.

Similar inequalities, it has been urged by some of our opponents, exist without complaint, in the neighbouring States of Maryland and North Carolina, which have, like Virginia, equal county representation.

Neither position is true. Complaints of unequal representation, have been made in both these States, without effect, because the foundation of them, bears no proportion to the inequality for which we are assembled to provide.

Maryland has nineteen counties, the largest of which, Frederick, contains a few more than 40,000 inhabitants, of every description; and the smallest, Calvert, a few more than 8,000. The proportion being of five to one, on the whole population, and rather more than eight to one, if their white population alone, be computed.

North Carolina has sixty-two counties. Rowan, the largest, has 26,000 inhabitants, and Washington, the least, very near 4,000: The proportion being about six and a half to one, and if the white population be separately computed, 21,000 to 2,300, or about nine to one. While we have seen that the total population of the largest county of Virginia, was, to the least, as far back as 1820, in the ratio exceeding fifteen to one, and computing the white population alone, of twenty-six to one.

There is not a man within the sound of my voice, said Mr. M. nor would there be one who merited the appellation, could I be heard by the people of America, who would consent to be degraded by the application of such a scale of political power, to his own rights in comparison with those of his neighbour.

In one branch of the Legislature, a similar inequality was redressed in 1817, by a new arrangement of the Senatorial districts, on the basis of white population. At that time, four members, of a body consisting of twenty-four, represented two-fifths of the entire population of the State, and might have been outvoted by the representation of a twelfth. The evil called aloud for redress, and it was redressed in the manner, in which we now ask to have remedied a similar inequality in the other branch of the General Assembly. I was one of those who retired from this Hall in 1817, prepared to await the development of the new distribution of the Senate, and acquiescing in the existing state of affairs. The arrival of a period of profound tranquillity among the parties which had divided, not Virginia, but the Union, (for a mere contest for the Presidency, could give rise to but transient excitement,)—a contest, in which for several years, he had felt scarcely interest enough to carry him to the polls, had prompted him to unite with his fellow-citizens, in endeavouring to amend the defects of their common Government.

Having disposed of the mixed basis of taxation and white population, of slave and free population, regarding, as he proceeded, the claim of the former to consideration, both as persons and as property; and exposed the inequality of county representation, he came now to an examination of the only remaining basis, or that which had been

adopted and recommended to the Convention by the Legislative Committee—the numbers of the free white population exclusively, and that, with a view to give to equal numbers, equal portions of political power in the constitution of the popular branch of the Government.

A proposition had, indeed, been submitted to the Convention, by his eloquent friend from Norfolk, in the form of an amendment of the Bill of Rights, which asserted that equal numbers of legal voters throughout the Commonwealth, should have equal political power, without regard to the distinction of fortune. As such a proposition might be regarded as of a different character from that contained in the resolution of the Legislative Committee, Mr. M. said he would, as the incipient step towards the conclusion he was desirous to reach, undertake to shew their practical if not theoretical conformity. Whatever extent may be given to the right of suffrage, the only important distinction between these propositions will be found to consist in the superior facility of executing that which requires, simply, a periodical enumeration of the white population of the Commonwealth. To compute all the legal voters of the Commonwealth, supposing the extension of suffrage to be built upon the present freehold qualification, enlarged by the admission of other classes of citizens, not freeholders, to the same privilege, would require the enumeration of all classes. If that labour be regarded in relation to the freeholders alone, it is not difficult to conceive its magnitude and the delays which must attend its execution.

In a computation of legal voters, instead of active agents, competent, at little cost, to take a Census of the people, learned Justices in Eyre must be provided in sufficient number to traverse every county, city, borough, or election district in the Commonwealth, in order to enquire who have freehold estates, and have been so seized for the period required by law. If to these, be added, the cases of constructive freeholds, and of tenants in common, whose names may not, and often do not, appear on the Commissioners' lists, and should claimants in reversion and remainder, of vested or contingent freeholds be empowered to vote, as some gentlemen propose, many years would elapse in making the necessary enumeration and lists for the apportionment of Delegates. Nor would this painful and costly, if not impracticable labour, lead to a different result from that of the Census of the free white population, as we have good grounds to infer under any extension of suffrage. The more enlarged it may be, the more nearly will the numbers of those who are legal voters, approach the number of that population. But if restricted to landed qualification, or extended to all who pay taxes on moveable property, still the apportionment to white population will very nearly, if not exactly, conform to that which might be founded on a computation of the number of votes.

As evidence of this, Mr. M. referred to three of the tables lately supplied by the Auditor of Public Accounts.

To the first of these, that which professed to deduce white population of 1829, in the several counties, from the number of titheables voluntarily returned to that officer, at his request, Mr. M. could not yield implicit confidence. Indefatigable, faithful and intelligent as he knew that officer to be, he could not do more than use the materials supplied him. Mr. M. had seen that, in the district which he in part represented, one immediately below the Blue Ridge, intersected by three of the most extensive turnpikes in the Commonwealth, and having more of that description of improvement within it, constructed by individual enterprise, than is to be found in all the rest of the Commonwealth put together; this table manifested a reduction in nine years of the entire population of 1820, by 5,384 souls: a fact which he most confidently believed to be untrue. He would undertake to say that the county of Loudoun had, in that period, sustained no loss of white population, and Fairfax very little, if any. Another error, of almost equal extent, had occurred in the same statement, in adding to the population of Augusta a number equal to that which had been taken from Loudoun. Abandoning the conclusions to be drawn from a table, so inaccurate, Mr. Mercer said he would go back to the Census of 1820, in which he discovered that the white population West of the Blue Ridge bore very nearly the same ratio to the white population below that mountain, that the number of persons in the one territory charged on the land-books of 1826 with taxes on a quantity of land not less than twenty-five acres, or on a lot or part of a lot in a town established by law, bore to the same description of persons in the other? The first ratio being nearly that of 25 to 35, and the second that of 37 to 53: While the third table reported the number of persons, West of the same mountain, who are charged with a State tax on moveable property for the year 1828, to be 40,079: and the number of persons, East of it, charged in the same year, with the same tax, to be 55,514.

This ratio may be expressed with sufficient accuracy, by 40 to 55, and corresponds so nearly with that of 37 to 53, the ratio of the proprietors of lands and lots, in *these two districts*, and of 25 to 35, that of the white population of the same districts, that with little error, a common measure may be assumed for these three proportions. That measure would express both the relative proportion of the white population

above and below this natural division of the Commonwealth, and of the legal voters of the same districts. Inferring from the identity of these three proportions, between the free inhabitants and the proprietors of real and moveable property in these extensive territories of the Commonwealth, the like identity throughout their minute sub-divisions, I shall consider myself, in the sequel of my argument, as sustaining, at the same time, the position of my friend from Norfolk, and that of the Legislative Committee.

In entering upon the last which I propose to consider, but by far, the most important enquiry, of the many, which have arisen in the progress of this debate, into "the right of the majority of any society to govern it," I find myself embarrassed, by the very simplicity of the truth, I have to maintain. What is obscure, may be explained; what is perplexed, disentangled: error may be detected, and falsehood exposed. But the mind is surprised, by the denial of a principle universally admitted, and at a loss to prove, what, for ages, no one has had the singularity, or the temerity, to question.

We are, however told, that there are no principles to be admitted any longer; that none in fact exist; and that whatever proposition we advance, as the basis of our reasoning, must be proved.

The natural equality of man is written on his heart and stamped upon his visage by the author of his being, after whose "express image" he was made.

While other animals look to the earth;

Os homini sublime dedit ad sidera tollere vultus,—

His rights spring from his affections and his wants, and these he derived from God, the author of his nature. He cannot exist out of society, because society is essential to his existence. His first relations are those of husband and father. That period, which in other animals is short, of dependence on a parent's care, is in man protracted for purposes the most beneficent. The infant gathers his first instruction in his mother's lap. His best virtues he imbibes from a father's care, a mother's tenderness. When age overcomes the parent, the son re-pays with kindness, the kindness he has received. If the crutch drops from the feeble grasp of his sire, he picks it up and restores it to his trembling hand. Patriotism is but filial love enlarged. When we think of our country, we dwell on the memory of our early years, on the forms of those who gave us our being and watched over its imbecility. When they are gone, we visit their remains, and from the unconscious dead imbibe anew the inspiration of their virtues. Does not the savage cherish these affections? The Tartar wanders over the interminable plains of Asia from climate to climate, accompanied by his flocks and herds; the Indian of America roams through forests, yet more wild. But they re-visit the tombs of their progenitors, and recount to their children the story of their deeds.

Are not these natural affections at the foundation of all the moral rights and duties of man?

Sympathy, is it not as natural to man as to the gregarious animals whom he gathers around him? Out of these feelings, spring the elements of society.

Is there no property known to savage life? Even the bird defends her nest, as the lion does his den, the former with less vigor, but with equal zeal. The hunter decorates his cave with the fur of the animals he has killed; and stores away, in time of plenty, the provisions which a season of want may require. He has his bow and arrows for the mountain deer, and when he approaches the water side, his canoe and spear for the finny tribe. In contempt of danger, he traverses the land and the water under the influence of the same feelings which prompt the civilized man to build permanent habitations, to till the land, and to lay up the fruits of autumn for the necessities of winter. How can labour and property be separated? Property is at once the fruit and the spring of labour. The author of the Essay on the Human Understanding, in his treatise on Civil Government, tells us emphatically, that he means, "*by property*," to denote "the life, liberty, and all the possessions of man."

I own that I was shocked, said Mr. M. when on opening the grammar of the law, I first met the phrase "Rights of things." Of Rights to things, I could readily conceive. Though things are external to man, and may be detached from him, yet the right to them is inseparably connected with his natural as well as social condition, and is, as personal, as his right to locomotion, the exercise of which, supposes a control over the objects around, and consequently without himself.

If it be contended that this early condition of man is not a state of nature, but of society, I am content, since it is one in which he is not bound to acknowledge a superior right, in another, to control his conduct.

The existence of the rights which he enjoys, supposes a correspondent obligation, on his part, to respect the similar rights of others; and hence the equality of right common to all.

The insecurity and inconvenience attendant on such a state of existence, would render it of transient duration; and nature who has given faculties to man which are susceptible of improvement, and made their exercise conducive to his happiness, cannot be supposed to have designed his continuance in a state unfitted for their cultivation.

It is a condition, however, in which, not Locke only, but all moral, and nearly all political writers, have supposed man to exist, for the sake of establishing, by the light of reason, his moral as well as his political rights and obligations. Upon the same basis rest the treatises that have been made upon the law of nature and of nations, which is but the just practical application, to sovereign States, of those rules which appertain to the relations of man in a state of nature. Vattel founds his code of international law, on the philosophy of Wolfius; and deduces the equality of States, from the same source from which Locke inferred the natural freedom and independence of man.

I trust I shall be pardoned for saying, that I have been alarmed, as well as shocked, at the levity with which the great apostle of English liberty and his doctrines have been treated by the greater part of our adversaries in this debate.

They reproach us with deriding the wisdom of past ages, in the pursuit of novel doctrines, while they claim, for themselves, to be wiser than their fathers who studied with veneration the political philosophy of Locke, and embodied its maxims in their Constitutions of Government.

He wrote, it seems, a Comstitution for Carolina, and borrowed for his titular distinctions, terms of American and German origin—"Caciques and Landgraves." Names then are things; and the queen of flowers is less sweet, if not called, the rose. Locke cherished and sustained the great principles of liberty, by defending, as Milton, against the same foe, the infamous house of Stuart, the liberty of his countrymen, to frame what Government they pleased. That his enemies in England, as well as Scotland, were at that time neither few nor impotent, was manifested in the succeeding century by two rebellions. It is remarkable that his cotemporary and antagonist, Sir Robert Filmer, assailed the foundation of all his reasoning—the maxim, that all men are by nature and by birth *equally free*, with the same argument in behalf of the divine right of kings, that we have just heard used, not indeed for the same purpose, but in opposition to the same doctrine of natural liberty, which we infer from the Bill of Rights prefixed to our State Constitution. The ingenious member from Northampton (Mr. Upshur) used for this purpose one of Filmer's cases. Ascending to the creation of man, he historically proved, that our first parents formed the earliest human society of which there is any record, and he asked emphatically, if the doctrine of the natural equality of man be true, *when* Cain became equal to Adam, his father? "If it was at 10, at 15, or 30 years of age." I use the very words of the interrogation. In the language of Locke, I reply to it; *when Cain*, having arrived at maturity, no longer depended on his father for subsistence and protection; and the children, also, of Abel, when they sustained the wants and soothed the infirmity of their aged grandsire.

The gentleman from Chesterfield, following the example of the gentleman from Northampton, whose argument he applauded, has cast away Cocker, as well as Locke, and taken up with Robinson Crusoe and De Foe, as *his* authorities. "Robinson Crusoe," it seems, "saved Friday's life, and bound his heart to him:" "he gave Friday bread, and bound to him his body." I have heard of slavery, arising from the rights of conquest, and if my memory does not err, Grotius, I think, infers its legality from the power of the victor, to slay his enemy. But I never before heard this doctrine deduced from the rights of humanity and the obligation of gratitude.

"Robinson Crusoe gave Friday bread." They lived alone, but had commerce, introduced arts and money on their island, Friday might justly have claimed, for his labor, more than his bread: and if he preferred any other master, or to cease from labor, I know not the law, human or divine, which would have held him in subjection.

If, along with these two islanders, ninety-nine other men had settled and formed one society, Friday would have been as free as Robinson Crusoe himself.

Not one of these settlers would have been bound, by any will but his own, to form, or when formed by others, to remain in this society; but having made it, the majority of its members, until some other rule were provided, would of necessity govern it, as our majority does the proceedings of this body. So is governed every other body constituted like it, that is, without having a different rule prescribed for its government, by higher authority. We know none, except that of God, higher than the power of a Convention of the people, which is the power of the people themselves.

We have adopted the rules of the House of Delegates to regulate our proceedings; but we were not bound to choose these, any more than the rules of the House of Representatives of the United States, or of the Legislature of any of the individual States. We might have taken those of Massachusetts, or of Georgia. We might have required a majority of two-thirds to the decision of any question; for the elec-

tion of a President, or of a Select Committee. But even the rule of two-thirds, absurd as it would be regarded, would derive its sanction from the will of a majority of this body. This doctrine is so interwoven in all our thoughts, habits of political action, and modes of judging, that to deny it, is to wound the common sense of every portion of the American people. Let us return, for a moment to the island of De Foe, and the newly formed society we left there. Suppose they desire to establish a political Government. To organize its Legislative, Judicial, and Executive Departments. Would they adopt any other rule of proceeding than by a majority? It has been contended that, in our Bill of Rights, the power of a majority to change the Constitution is limited to cases wherein the public good requires such change. But, who is to judge when the case occurs? The public good is made up of the good of all the individuals who compose the public. Each man judges for himself and the community, what is best, and the majority must consequently prevail, it being the majority of all the judgments so formed, and having the sanction of a majority for its execution. This sanction is, therefore, moral as well as physical. Suppose the settlers on the island of De Foe, to have brought their respective families with them, consisting of women and children. Count these or not, in the division by which the majority is ascertained, and the ratio is unchanged. For if, from any two numbers having a given proportion to each other, there be taken other numbers bearing to each other the same ratio, the former remains unaltered. And so will it be, if, in like proportion you augment those numbers. Women undoubtedly add to the physical force of society, and so do infants. I have voted in New Jersey, under a Constitution of Government, which does not exclude females from the right of suffrage. The Constitution has undergone no change in this State, but the society has. No woman votes, at present, because no lady will go to the polls.

Casuistry and sophistry may perplex the doctrine of the natural freedom and equality of man, and of the consequent right of the majority of society, already formed, to govern it, where no positive agreement has otherwise ordered; but the common sense of mankind will indicate their essential and natural rights.

The disorders of that Parisian mob, which overawed the deliberations of the constituted authorities of France, in the early stage of her late revolution, were the abuses of liberty, by mere brutal force, exerted against the principles by which its leaders professed to be guided.

The abuse of truth is no argument against its existence. What has not been abused? A cloud is now passing over the sun; but is that glorious luminary extinguished? The gospel of peace has been buried in superstition, after being shrouded in blood; but is our religion false? The most *precious things* are abused, and for the very reason that they are so. They interest the passions of man in the same degree that they are essential to his happiness.

Rejecting the authorities relied upon by the members from Northampton and from Chesterfield, I turn to others in favor of human liberty, which I deem more pertinent to my subject. Since the Bill of Rights prefixed to our own Constitution is deemed equivocal, in its language, by some of our opponents, and denied the validity of law, by others, I ask the indulgence of the Committee, while I look for authorities, less questionable, in the Constitutions of our sister States, to sustain the natural equality of man and the rights of a majority, or, in the language of my friend from Frederick, (Mr. Cooke,) who opened this debate, the *jus majoris*.

Before I consult the Constitutions of the New England States, I must be allowed to express to the gentleman from Orange, (Mr. P. P. Barbour) to whose lucid style of reasoning I always attend with pleasure, my surprise as well as regret, that he should have so highly complimented the political institutions of Massachusetts, and have, at the same time, denounced so unsparingly, those which have been planted "in the wilds of the west" by the emigrant descendants of this hardy race of freemen.

Ohio, Indiana and Illinois, are but swarms from the fruitful northern hive, as Kentucky, Tennessee, Alabama, and Mississippi, are descended from our own southern stock. As they have receded farther from our royal charters, and framed their institutions at greater leisure, with the advantages of the same experience and untrammelled by pre-existing disabilities, so they have carried out our principles with equal truth and greater simplicity.

But I will not offend the taste of any gentleman who may, however fastidiously, prefer the institutions of New England to those of the west.

Massachusetts formed her Constitution as our fathers did ours, in a period of war; but after expelling the enemy from her bosom: and the leisure with which she proceeded, is manifested by the time which she consumed in completing her labor, which was begun in September, 1779, and ended in March, 1780.

Her Declaration of Rights is expressly made a constituent part of her Constitution—and the first article of it affirms that

"All men are born free and equal, 'and have certain natural, essential, and unalienable rights,' among which, is that of seeking and obtaining their happiness."

The preamble sets forth "The end of the institution, maintenance and administration of Government to be—to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity, their natural rights."

It asserts, that "The body is formed by a voluntary association of individuals. It is a social compact." And in the seventh article of the Declaration of Rights, these doctrines are repeated and fortified after a solemn assertion, that "Government is instituted for the protection, safety, prosperity and happiness of the people," by declaring that "the people alone have an incontestible, unalienable and indefeasible right to institute Government, and to reform, alter, or totally change the same"—and farther, that

"All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of Government, have an *equal right* to elect officers, and to be elected for public employments."

Article 10 asserts that, "Each individual of the society has a right to be protected by it, in the enjoyment of his life, liberty and property, according to the standing laws. He is obliged, consequently, to contribute his share to the expense of their protection, to give his personal service or an equivalent, when necessary." Here we see the origin of taxation. Its qualification comes next. "But no part of the property of an individual can with justice be taken from him, or applied to the public use, without his own consent, or that of the representative body of the people."

Again, we read—"The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives." How is such instruction to be given? By a representation of property? On the principles of a mixed basis, or by a majority of those authorised to give it? And if the majority of the voters may overrule the representative by instructions, what becomes of the supposed *majority of interests*, or of *property* in Legislation?

The Constitution of New Hampshire, as altered and amended by a Convention of Delegates in February, 1792, affirms in the first part of the first article, nearly in the language of Massachusetts, that "all men are born equally free and independent: *Therefore*, all government, of right, originates from the people, is founded *in consent* and instituted for the general good."

"Art. 2. All men have certain, natural, essential and inherent rights—among which are the enjoying and defending life and liberty: acquiring, possessing and protecting property: and in a word, of seeking and obtaining happiness.

"Art. 3. When men enter into a state of society, they surrender up some of their *natural rights*, to that society, in order to ensure the protection of others; and without such an equivalent, the surrender is void.

"Art 4. Among the natural rights, some are, in their very nature, unalienable, because no equivalent can be given or received for them. Of this kind are the rights of conscience.

"Art. 11. All elections ought to be free, and every inhabitant of the State, having the proper qualifications, has an equal right to elect and be elected into office."

The Constitution of Vermont was adopted July 4th, 1793.

The first chapter of the first article, declares:

"That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."

The Charter of Rhode Island was granted by King Charles II. in the fourteenth year of his reign.

The inhabitants of this State are now, according to the argument of the gentleman from Chesterfield, in reply to that of my friend from Brooke, the subjects of George IV. since he contended, that if the Constitution of Virginia, be void, the people of Virginia are so; having, as he supposes, no other form of Government than that of their Royal Charter.

From this dilemma, however, if the Declaration of Independence did not relieve them, I presume the treaty of peace did, which ended the war of the revolution with the admission of that Independence, by the only nation that had an interest in denying it.

The Constitution of Connecticut also contains one of those silly instruments, called a Declaration of Rights. It begins, too, in a most exceptionable manner, for it uses in contradiction of all the arguments we have heard, to prove that there are no principles of Government, the following language as a preamble to its very first article:

"That the *great and essential principles* of liberty and free Government may be recognized and *established*—we (the people of Connecticut) declare—That all men, when they form a social compact, are equal in rights." What rights? Rights antecedent to the compact, I presume. "And that no man, or set of men, are entitled to exclusive public emoluments or privileges from the community." The following section of this

article affirms, in the language of the Constitutions I have already noticed—"That all political power is inherent in the people, and all free Governments are founded on their authority, and instituted for their benefit: and that they have, *at all times*, an undeniable and infeasible right to alter their form of Government, in such manner, as they may think expedient."

Both branches of the Legislature of this State, consist of members chosen annually, by the electors, who may be any white male citizen of the United States, above twenty-one years of age, having gained a settlement in the State, resided six months before the election at which he offers to vote in the town, in which such election is held, and shall have paid, if liable thereto, a State tax within the past year.

The Senate consists of twelve members, elected by the greatest number of votes of the whole people, or by a general ticket.

The Constitution of New York contains no Bill or Declaration of Rights; but it affords a practical exemplification of all the great maxims of natural liberty asserted by the States of New-England, from which the far greater part of her own population has been derived.

It establishes and appropriates certain taxes on salt, and certain auction duties, that then yielded the State more than half the annual revenue, but it allows no representation for either.

It establishes the right of suffrage on a very broad basis, requiring a freehold qualification only in persons of colour. The Senate which it creates, consists of thirty-two members, for the election of whom it divides the territory of the State into eight districts, with reference exclusively to the number of their inhabitants, to be ascertained by an enumeration to be made once in every ten years.

The Assembly consists of one hundred and twenty-eight members to be apportioned among the several counties of the State, according to the number of their respective inhabitants. It moreover provides, that every county heretofore established and separately organized, shall always be entitled to one member of the Assembly; but no new county shall hereafter be erected, unless its population shall entitle it to a member. This is rather an apparent than real, and at most but a transient qualification of equal representation as will be seen, by recurring to the actual population of the smallest county in this State, and comparing the extent of its fast peopling territory, with that of the oldest and most populous counties.

The Constitution of New Jersey was made while she recognized her Colonial dependence on Great Britain; and the only subsequent alteration of it has been effected by a law, substituting in its language, where the word "*Colony*" occurs, the word "*State*."

It is very nearly as ancient, as that of Virginia. But although ratified two days only, before the Declaration of Independence by Congress, it expressly provides that it shall be void in the event of a reconciliation with Great Britain. By her persevering struggle, through the calamities of the common war, waged in support of the principles, for which we now contend in debate—this gallant State, manifested the value, which she set on those principles, by her deeds, if not by the terms of her Constitution.

The Constitution of Pennsylvania made in 1790, is obnoxious both in its principles, and its details, to the criticism of all the gentlemen who have advocated the basis of taxation, and numbers, as the proper ground of representation. The 9th article, has the following remarkable preamble, "That the general, great and essential principles of liberty and free Government, may be *recognized and unalterably* established, we declare:

I. "That all men are *born equally* free and independent, and have certain *inherent and infeasible* rights, among which, are those of enjoying and defending life and liberty; of acquiring and protecting property and reputation, and of pursuing their own happiness.

II. "That all power is inherent in the people, and all free Governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of those ends, they have, at all times, an unalienable, and infeasible right, to alter, reform, or abolish their Government, in such manner as they may think proper."

In giving effect to these principles, the Constitution of this State, provides that the number of representatives of the popular branch of her Legislature shall be apportioned according to the number of taxable inhabitants, without respect to the sum of tax paid by each, among the city of Philadelphia, and the several counties of the Commonwealth, in conformity with an examination to be made once in seven years.

The Senate consists of members to be chosen in districts, after a periodical apportionment to the number of taxable inhabitants in each district.

While the population of Philadelphia, is not denied its proportional weight in the Councils of Pennsylvania, no respect is paid to the superior wealth of that city, which yields a full moiety of the revenue of the State, in the shape of taxes.

To this State, belongs, moreover, the glory of having preceded Virginia, more than a century, in asserting the great principles of religious freedom.

The people of Delaware, the least State in the Union, fall not behind their more powerful fellow-citizens in asserting the natural rights of man, both civil, and religious.

In their Constitution made in 1792—"We," say the people of this Commonwealth, "herely ordain and establish this Constitution of Government for the State of Delaware.

"Through divine goodness, all men have by nature the rights of worshipping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and, in general, of attaining objects suitable to their condition, without injury by one to another; and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them; and, therefore, all just authority in the institutions of political society, is derived from the people, and established with their consent, to advance their happiness: and they may, for this end, as circumstances require, from time to time, alter their Constitution of Government."

The Constitution of Maryland dates its existence from 1776, the most memorable year of the war of the revolution, and maintains, the principles which gave rise to it, in the following declaration: "We, the Delegates of Maryland in free and full Convention assembled"—declare, "That all Government of right, originates from the people, *is founded in compact only*, and instituted solely for the good of the whole people."

"That all persons invested with the Legislative or Executive powers of Government, are the trustees of the public, and as such, accountable for their conduct; wherefore, whenever the ends of government are perverted, and the public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to, reform the old, or establish a new Government. The doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

"That the right, in the people, to participate in the Legislature, is the best security of liberty, and the foundation of all free Government; for this purpose, elections ought to be free and frequent, and every man having property in, a common interest with, and attachment to, the community, ought to have a Right of Suffrage."

I fear, said Mr. M. that I have wearied the attention of the Committee, before I have reached the Bill of Rights of our own Constitution, if a Bill of Rights and Constitution we have, as I myself do not doubt, whatever may have been the defect of their origin. That Bill of Rights is so engraven on the memory of every member of this Committee, and has been so often referred to in this debate, that I will not read it. But I protest against that construction of the sacred truths which it contains, which seeks to impair their force, by combining them with the actual details of the Constitution.

The causes of the imperfections of the machine of Government, were truly and eloquently unfolded, by my friend from Frederick, (Mr. Cooke.) But the presence of danger, which may obstruct the labour of the most skilful artist in the fabrication of a complicated engine, need not impair his judgment of the plan by which he works. A re-organization of the counties of Virginia, or a Census of her population, at a time when no Census had ever been taken, of any people in modern Europe, or, for aught I know, in modern times; and at such a time—when a threatened invasion, by a foreign and most formidable enemy, was hourly expected to drive the people from their homes, and to waste their estates, was not within the compass of possible events. But, did it follow, that the great principles of freedom, for which the framers of the Constitution contended, in battle as well as in debate, should not be profoundly understood and ably elucidated? Was not the occasion calculated to quicken and invigorate all the operations of the human intellect; and although it might embarrass the movements of the principal actors, to enlighten, strengthen, and confirm their purpose?

Were the framers of our Constitution but half educated, as it is contended, all their descendants are? In such an age, truth flashes from mind to mind, with electric activity, and a force irresistible. Hence, we perceive not merely a conformity of opinion, but an identity of language, in all the State Constitutions of that period, from Massachusetts to Georgia, in relation to the foundation of my present argument, the natural equality in which men enter society, and the right of a majority of numbers to govern.

The direct tendency, the obvious as well as declared purpose of the basis of representation, adopted by the Legislative Committee, is to enable such a majority of the people of Virginia to govern this Commonwealth, as, of right, they should.

The member from Chesterfield, recurring to the same period with myself, and reasoning from a supposed inequality in the present taxes of this Commonwealth, invokes the principles of the Revolution to his aid. Our quarrel with the mother country, he, along with several of his predecessors, earnestly tells us, grew out of the violation of

the principle, for which he and they are now contending, "of not being taxed without their consent," which they so define as to require a certain proportion between taxation and representation. On the other hand, it has been insisted by my friend from Brooke, that the Revolution sprung from a total denial, on the part of the Colonies, of the right of the British Parliament, to bind them to an obedience of any laws whatever, to which they had not given their assent, by their Colonial Legislatures.

No two gentlemen have precisely agreed on this topic; and yet, it seems to me, that none have erred in their statements so far as they have severally gone. Their disagreements have arisen from their severally referring to different periods of a contest of long duration. It began with the memorable Stamp Act, which imposed a tax to operate in the interior of each Colony, mingling with all the transactions of life. The tax was resisted, in argument, on both sides of the Atlantic, on the ground, that the Colonies were not represented in the Parliament of England; and, therefore, should not be taxed. The stamps were sent to America—a mob at Williamsburg threatened their destruction. The stamp-master resigned his station almost as soon as he landed; the city of Williamsburg was illuminated; the stamps re-shipped, and the act imposing them, shortly after rescinded.

The elder Pitt, and his eloquent co-adjutors, in opposition to the British ministry, of that day, contended, that the mother country had a right to bind the Colonies in all cases whatever of *legislation*, but that *taxation* was not *legislation*. That *taxes* were a *free grant* of money, by the Commons, to the Crown; and that, being so, the Commons of England could not grant away the money of the people of America.

Fortunately, as the event proved for us, but unluckily for Great Britain, Charles Townsend discovered a mode of obviating the objection to the Stamp Act, by the exercise of what, he considered, the unquestioned right of Parliament to regulate the trade between the Colonies and the mother country, which he deemed an office of ordinary legislation. Hence the imposition of a duty on tea, payable on being landed at the place of importation.

The Colonies found that they had nothing to gain by this distinction, since money could as well be drawn from their pockets, by commercial regulations, which were laws, as by taxation considered as, what few taxes ever are, the free grants of those by whom they are paid. They discovered, in fact, what their friends, for some time, appeared not to have contemplated, on the other side of the Atlantic, that to avoid taxation in some shape or other, they must maintain the doctrine that the British Parliament had a right to bind them, in no shape whatever, without their consent: That the Union of the Empire on both sides of the Atlantic, was, as that of Scotland with England, in the Crown, and, not in the Parliament. My friend from Brooke had, in his able argument, very truly described this stage of the controversy, at which, and not before, the tender of a representation in Parliament was made, to America, by England, and scornfully, as well as wisely rejected. Had a similar effort, at reconciliation, been made, at the period of the repeal of the Stamp Act, a different result might have happened, and the subsequent controversy delayed, if not prevented. To this early stage of the contest, between England and her Colonies, the gentlemen from Northampton, (Mr. Upshur,) from Hanover, (Mr. Morris,) and from Chesterfield, (Mr. Leigh,) had adverted in aid of their common opposition to the resolution in debate.

The last of these gentlemen has pushed the inference, which he deduced from the doctrine of the former opposition in England, relative to the nature of taxation, to a length as extravagant in some of its consequences, as inconsistent with the modern notion of taxation, on both sides of the Atlantic.

Are we to go back to the declension of the Feudal system, imported from Normandy, or yet farther, to the Saxon Wittenagemote, to learn from the antiquities of the English Government the nature of taxation in America? That taxes, are not the free grants of those who pay them, in a country where every thing is taxed from the cradle to the coffin? Where the exciseman seals up the key-hole of the door of the warehouse of the manufacturer, and carries away the key in his pocket!

That the House of Commons, gradually acquired the rank of a co-ordinate branch of the English Parliament, by firmly uniting to their grants of money to the Crown, the petitions of their constituents, for a redress of grievances, is an historical fact, which can reflect no light on the path of our present enquiry.

The legislative power of the Commons, is established in England, on the principles of the revolution of 1688. Taxation is a branch of legislative power, and was the instrument of its acquisition. In the last relation, it bears, however, no necessary affinity to the end which it accomplished. Who would trace to Syria or Spain, the origin of Magna Charta, because the sword blades of the Barons, who assembled at Runnymede under the frowning turrets of Windsor, may have been forged at Damascus or Toledo? Shall we, at this day, repair to the British House of Commons to learn the true character of Legislative power in America? An instructive lesson it might teach us, against the inequality of representation of which we so justly complain. The corruption to which it has given rise, is no longer confined to the rotten boroughs in the

gift of the nobility, but extends to the vitals of the people. Turn to the life of Sheridan, by More, and you may read this truth, in the reproaches which he makes to his friends, that they will not supply him with funds to purchase a seat in Parliament. There, indeed, a representative has to buy his constituents. Sometimes to travel through the kingdom to find them.

In attempting to assimilate the present controversy for political power between different parts of this Commonwealth, to that which subsisted between England and her Colonies in the war of the revolution, the member from Clesterfield relies on a supposed inequality in the distribution of the taxes of the Commonwealth. He would justify the lowland country, which is over-represented, in maintaining a political power disproportionate to the numbers of its white population, on the ground that it is at present over-taxed.

To sustain his position, he should show that the public taxes are not fairly proportioned to the ability of those by whom they are paid—and could he show this, the responsibility, for such injustice, would rest, not with those who claim a new apportionment of the legislative power of the Government, but with those who have so long ruled the Commonwealth.

It may not be amiss to examine the facts from which this supposed inequality of taxation is deduced. With this view, I beg leave to recall the attention of the Committee to some of those which I adduced, for another purpose, in an early stage of my argument. The revenue of this Commonwealth, except the income of the funds for Internal Improvement and Education, was before the last war, as it has been ever since the peace, principally drawn from three sources: taxes on land, slaves and horses.

If the actual value of the lands and lots assessed for taxation, be now assumed to be \$90,000,000; of the slaves, amounting in number to 450,000, to be \$67,500,000; and of 273,000 horses, at 50 dollars each, to be \$13,650,000; then a comparison of the revenue derived from each of these sources in the last year, will by no means prove that the public burthens are unequally distributed, to the prejudice of the slaveholder.

The revenue charged upon this peculiar capital will be found to be less than that charged upon horses, and still less than that charged upon lands, estimating each subject of taxation at its fair value. For evidence of this, I refer to a table of the comparative revenue on each of these subjects since the equalizing land-tax and Senatorial district act of 1817, which went into complete operation in 1820.

For the first four years of the succeeding period, the average product of the land-tax, was \$181,000, of the slave-tax \$159,000, and of the horse-tax \$38,000.

The revenue from these sources, for the current year, in round numbers, is, by the table supplied me, 175,000 dollars on lands, 97,000 on slaves, and 33,000 on horses. Notwithstanding all that has been said in the debate, these facts bear me out in the position, that in the current year, the capital in slaves is taxed less than that in land.

An error pervades all the reasoning of our adversaries on this subject, in considering the slave-tax as a tax on a certain territory rather than on a productive property; of the tax upon which, no complaint would be made, were it dispersed over the surface of the Commonwealth. For it is not easy to conceive an objection to a tax on this property that might not be made with equal propriety to any other tax whatever. It is founded as all taxes should be, on the ability of the persons taxed; and that ability is derived from the productiveness of this species of stock. The tables of the natural growth of this population demonstrate, when compared with the increase of its numbers in the Commonwealth, for twenty years past, that an annual revenue of not less than a million and a half of dollars is derived from the exportation of a part of that increase: While the proprietors of the lands of the Commonwealth, contributing a greater tax in proportion to the actual value of those lands, have derived no correspondent profit from the gradual augmentation of that value. The revenue of every country consists of the income of its land, its labour, and its stock. Taxation can draw from that income without oppression, only part of what remains, after sustaining the capital of every description which produces it, and the labour engaged in its production. If the numbers of the labourers were an exact measure of this income, taxation to be equal, should be proportioned to the aggregate number of all the slaves and free labourers of a country. But, the surplus which the former are able to supply after sustaining themselves, is, in fact, greater in proportion as their wants are less costly, and their natural increase conspires with the produce of their labour to swell the income of the proprietor who is chargeable with the tax they pay.

But while I do not admit, but on the contrary, am prepared to disprove that injustice has hitherto been practised towards the proprietors of this description of property, I am not only desirous, but deem it practicable to afford to them a protection from the oppression which they apprehend.

I am aware, Mr. Chairman, said Mr. M. of the extreme sensibility, with which the members of this body, who are opposed to the resolution on your table, receive

every suggestion of a readiness on our part, to provide, by the Constitution itself, a security against the danger of unequal taxation. In whatever spirit it may be accepted, I am however prepared to submit a guarantee, which, to my poor judgment, will be both just in itself and adequate to its end. It will consist in a Constitutional provision, that no tax on slaves shall ever be imposed, without a general tax on lands and horses: and that every tax which may be levied on those subjects, shall be founded on a fair assessment of their value, and bear to that value an uniform proportion.

Compare the security which such a provision, would afford, with that supplied by the Constitution of the United States, to the same property, in the apportionment of all direct taxes; and will any question be made of the superiority of the former? How are direct taxes, which are to be apportioned among the States, according to their respective representation, distinguishable from indirect taxes, which are required to be uniform? In the judgment of the Supreme Court, in the case of the United States and Hilton, the boundaries of these two species of taxation, are designated mainly by reference to a single paragraph from the author of the *Wealth of Nations*. This was the case of the carriage tax, which the court regarded as a tax, not on capital, but expenditure, or income, which is commonly its measure. Some of the judges doubt their own ability to lay down characteristic distinctions which shall invariably serve to denote the appropriate subjects of these different taxes, required by the Constitution to be differently levied. The clause, on the other hand, which I propose as a security to the proprietor of slaves, against unequal taxation, if admitted into the Constitution, could receive but one construction, which there is not a magistrate in Virginia who would hesitate to pronounce, and by which, any law passed, in violation of it, would be promptly arrested. A similar security, I would leave it to those, who may deem it essential to dictate, for the protection of the tenure of this property. It will be repeated, "that these are but paper guarantees"—"mere parchment." And what else have we for our lives and our liberty? The trial by jury, the writ of *habeas corpus*, the freedom of speech, the liberty of the press, the rights of conscience, do they not all rest for their safety on the solemn compact of the people with each other, contained in the Constitution of the State, and of the United States?

When corruption and licentiousness shall have destroyed all the security which we derive from the Constitution, there will remain nothing else to preserve, or worthy of preservation. The proposed basis of free white population is represented, by our opponents, as an attempt to divorce property, from power. They speak, as if the whole property of the Commonwealth belonged exclusively to their constituents, and was about to be wrested from them by violence. The member from Chesterfield emphatically asserts, that what is *his*, is his. It is his, Sir, truly, but subject to the lawful claims of the Government, by which it is protected. Those claims are commensurate with the necessities of the Commonwealth, and the ability of its citizens to comply with them under a just and equal system of contribution.

Gentlemen imagine that a just and equal distribution of political power will expose all property to destruction. They have drawn lines across the Commonwealth, and exclaim, there, all is danger; here, all is security; as if they apprehended, from the West, an irruption of barbarians, as soon as a new basis of political power may be established.

Sir, no basis of representation can be formed, which will transfer the power of this Government from the hands of the slave-holding population, in less than twenty years from the first Census, which may be taken under a new Constitution.

I have pointed out some striking defects, in the table returned, upon conjecture, of the present white population of the various counties and corporations of the Commonwealth. It is safe to reason from our past, to our future growth. After adopting a course sanctioned by experience, and deriving its facts from the actual enumerations of the population of the Commonwealth—I have arrived at this result; and I appeal to the gentlemen who have expressed so much alarm, to disprove it if they can.

They conjure up imaginary dangers and reason from them, as if, instead of being the creatures of their own fancy, they were solemn realities.

All the foundations of property are to be uprooted! By whom? By men of frugal habits; who are laboring incessantly for its acquisition. Who can hope to acquire it, only, by the exertions of a hardy industry, from a stubborn soil, upon an uneven country, and who can hold and enjoy it, when acquired, but under the same protecting power of the laws? The tables I have already quoted, show, that property is diffused as widely to the West as to the East; and, consequently, the interest which guards its existence.

Do not our opponents perceive that the argument which they deduce against the augmentation of the power of the West, that it will be exerted to the prejudice of the East, may be retorted upon them, and with the greater force; since they desire to keep that, to which they have, in truth, no title; and which must consequently be maintained by that jealousy which ever accompanies injustice?

What, our opponents ask, has the *majority* to apprehend from the *minority*; the West, from the East? For if the proportions of the people be not thus, truly expressed, the East, has, itself, nothing to fear from the proposed apportionment of power. What, then, has the West to apprehend? I answer every thing, from the very alarm expressed by the gentlemen, who make the enquiry, in dread of the approaching ascendancy of the West? Laws, to discourage the improvement of a country, whose inhabitants are daily prompted to forsake it, by the temptations offered them, in cheaper lands abroad, and more liberal institutions, than they find at home.

Do you inquire what shall be the provisions of such laws? Some of them, I will borrow from our past; others from our existing code of Legislation.

I will not speak of the limitation of suffrage, in the Constitution itself, which degrades the non-freeholder to the level of the slave: but I will refer you to one of its consequences, the act of 1754, for Colonial defence. When threatened with a French and Indian war, the draft for compulsory enlistments, for military service, was extended by the General Assembly, to all persons, except such as were under twenty-one and above fifty years of age, and all *freeholders or voters*, and all *indented or bought servants*.

Need I go so far back? What is our present body of road laws, but one system of oppression upon the laboring poor, who are taxed in personal service as well as by a levy in money, equally with the rich, to keep that highway in repair, which they have not the power to injure, unless by their footsteps. Nay, to work on the roads is a duty from which any proprietor of *two slaves* is exempted, notwithstanding his use of the road is nearly in the direct proportion of his wealth?

What may I not say, of that system of poor laws, which extorts the resources of public charity, by an equal tax, from all men, without distinction of fortune, except what may arise from the application of a poll tax, to a country having slaves?

Such are some of the features of the old code. For the new, let us suppose every other branch of revenue lopped off from our present system, and a poll tax to be levied on the free white inhabitants of the Commonwealth, without reference to the distinction of wealth.

If, instead of cherishing, it be desired to keep down the West, such are the present facilities for descending the river Ohio, and many of its tributaries, that, but a little ingenuity would make the trans-Alleghany country a wilderness again, fit only for the habitation of beasts of prey.

Gentlemen reason, as if the only power in Government was taxation; as they have represented the protection of property to be almost the sole end of Legislation. They forget the numerous laws, which protect the rights of persons, in peace, as well as the more important shield, which they cast around him in war.

It cannot have been forgotten, that during the last war, it was proposed, and not without apparent reason, to exempt a part of the militia on the sea board, from military service, beyond the limits of their respective counties; a regulation which might have been extended, so far, as greatly to augment the pressure of military duty on the West.

What are all the laws which limit, or extend the period of military service? That exempt apprentices and slaves from the obligation to perform it; but laws, the burthen of which, the wealthy can escape, by hiring substitutes; and, to which, the poor man must yield obedience, however reluctantly he may leave his home without a master; his wife, without a husband; or his children without a parent to protect them.

How many laws are there, with respect even to property, which operate, also, upon the very body, manners and character of society; disappointing labour of its fruits, and bringing discredit upon the country, which is obliged to acknowledge their sway? Such are those laws which withhold the payment, or suspend the legal remedies for the recovery of just debts: which in fine, drive commerce from a land, designed by nature to be her favoured abode, and turn her choicest blessings into absolute curses.

Society owes other obligations, to itself, or to its members. Protection from foreign violence and the administration of justice, are of indispensable necessity. But the intercourse and education of its citizens, have, also, claims upon its attention, that no wise Government has, hitherto disregarded.

These subjects are among those, however, that fill our opponents with the greatest alarm. They have denounced all attempts to improve the natural advantages of the State, at public cost, whether by roads or canals; and this, because of a single experiment which has, it seems, been badly conducted.

The people of James river, have been disappointed in the result of a favorite improvement—As the member from Albemarle demonstrated, they owe that disappointment to themselves alone. They bought a whistle, found it discoursed not such music as they expected; and like a spoilt child, they have broken it in two, and thrown it away. If I may presume to advise them, and I am at least sincere in what I say, I will tell them to finish their canal to Lynchburg; then quadruple, as they well may, the load of their boats: substitute a single horse, an old man, and a boy, for their im-

elling power, instead of a half a dozen able bodied hands, and they will no longer, find cause to complain of the money they have expended.

But what has this failure to do with the question before us? Did not the first vote in this Hall, in favor of a Convention, precede this James river scheme of improvement, and did that not spring up in this city?

As for the late Charlottesville Convention, it had any other than a western origin.

I will leave its vindication, to my venerable, learned and patriotic friend, (Chief Justice Marshall,) now sitting before me, who I fear, will not give his support, to our basis of representation, though certainly, from no prejudice against the improvement of the roads and rivers of the Commonwealth.

The education of the people is, also, an object of dread; and the bill of 1817, which passed the House of Delegates, by a very large majority, notwithstanding its present unequal basis of representation, has been the topic of special denunciation and complaint.

We are told that we wish to acquire the power of educating the poor man's child, at the expense of the rich. I confess, I am ashamed to hear such suggestions, at this day, and in the Capitol of Virginia. Although, I perceive no connexion between them, and the purpose of our present deliberations, yet they spring from a source so respectable, (Mr. Green,) that I must believe, being worthy of the gentleman from Culpeper, (Mr. Green,) they merit my notice. Such a cause ought not to suffer, for want of an advocate. The bill referred to, with all its imperfections, I am willing to let rest upon my head. But one word of defence.

Since 1819, we have applied \$ 45,000 a year to the education of our poor, and 10,000 children are imperfectly taught for about six months in the year, by its application.

New York has, at present, in her free schools, open at all times, equally to the rich and the poor, more than 450,000 children; and to the State Treasury, the annual cost of their instruction is \$ 100,000. By the judicious application of this sum, she has elicited individual zeal and wealth sufficient to do the rest of this beneficent labor.

Connecticut, whose school system is an improvement upon that of Massachusetts, and nearly as ancient, as its importation from Scotland in 1647, employs in its support a revenue of \$ 80,000. She finds that sum sufficient to educate all her children, in number more than as many thousand. I once visited a gentleman in that State, the purest, if not the most perfect Commonwealth, in existence, who was worth several hundred thousand dollars, though with but four and twenty acres of land near his dwelling. He kept several carriages—and the son of his coachman went to the same school with his own grand-child. Both were well taught.

Except in the county of Brooke, where about five dollars a year suffices for the education of her poor children, the annual charge upon the Literary Fund, for every pupil whom it instructs, is no where less than eight dollars; while in Connecticut, this expense, as we see, is very little more than a fourth of that amount, corresponding, as it does, with the cost of instruction in the parochial schools of Scotland.

Will the rich any where complain of a system which, while the children of the poor are instructed enables them to educate their own, at a cost so reduced? And is the education of the people, who are every where in America, the acknowledged guardians of their own rights, the source of all political power, a subject of mere Eastern or Western interest, in Virginia?

Who are the people of the West? Are they not our fellow-citizens, our friends and brothers? Whence did they spring? From the East? Have they forgot their common origin? It was with extreme concern, that I heard the gentleman from Culpeper, (Mr. J. S. Barbour,) declare, a few days ago, that the West had not a proper sympathy with the East, and urge in proof of this charge, that during the invasion of the Commonwealth, in the last war, their representatives on this floor, voted against the Defence Bill of 1815. They did not hear, he emphatically said, the "sound of the cannon of the enemy, nor behold the distress of the East:" and, therefore, felt it not. He would not trust them with political power. Sir, said Mr. M. this very "Defence Bill," was the offspring of the joint labour of a delegate from Loudoun, and a gentleman from Augusta, now sitting in my view. I call upon my patriotic and liberal friend, to repel a charge, for which, there is not, in truth, the slightest foundation. If many Western delegates voted against this bill, so did many East of the mountains which divide us, as well they might. It became a law, as my honorable friend (Mr. Johnson,) can testify, who must well remember also the numerous imperfections which remained in it, and the complicated basis of taxation and enumeration, on which its most efficient provisions depended for their execution.

We trusted, in truth, to the moral feeling of the country, to supply those admitted defects. Nor, had the war continued, would that trust have been in vain—But while the war lasted, did it furnish no evidence of the common sympathy, which binds the West to the East? The gentleman from Chesterfield (Mr. Leigh,) himself, can attest the contrary. He had an official station, near the person of the commander of the army, which assembled for the defence of this Capitol; and if he was, as I then understood, the

author of the proclamation which brought that army together, he must remember its effect. [Mr. Leigh shook his head.] There was not a mountain, a river, a valley of the West, that did not respond with animation, to this appeal to the patriotism of Virginia. At the cry of invasion and danger from the East, every man of the West, from the summit of the Blue Ridge, to the shores of the Ohio, capable of bearing arms, mounted his knapsack, and turned his face from home—there was no distinction of the rich from the poor. Gentlemen who had occupied conspicuous places in our halls of legislation—the ploughman from the fresh fallow field—officers, soldiers and citizens—all moved on with one accord. In a fortnight, 15,000 men were mustered in sight of the Capitol; among them the largest body of cavalry that ever was reviewed in our portion of this continent. In one morning, a thousand of them were discharged as supernumeraries. On their return home, they met the eagles of the West, still sweeping their flight to the East. Their course was turned to their mountains, only when danger had ceased.

Nor was this, the only proof, during that war, which the West afforded, of devotion to the East.

Shall I be told, by the gentleman from Chesterfield, while I labor to bind closer around my countrymen, the cords of union, that I haunt his imagination with the spectres of the men who died at Norfolk? I purposely omit the offensive association which accompanied the allusion. I will bear his reproaches.

It is full well known that, in the progress of that war, Virginia was thrown, in a great degree, upon her own resources, for defence. Her noble bay, was locked up by a British Admiral. Her State taxes doubled—Private income was nearly at an end. Her Banks had, by forced loans, been compelled to suspend the issue of specie. A currency of depreciated paper flooded the markets of the country, where there were any. The system of common defence by the forces of the Union, had so far failed, that the several States had begun to raise separate armies for their peculiar safety. It was a time to try men's hearts. And what did the West? March, without a murmur, from their health-inspiring mountains, to the marshes of Princess Anne. They descended from the remotest boundaries of the Commonwealth, traversing it for four hundred miles, from Washington and Brooke, to the sea-board. I witnessed their conduct, their sufferings, and the fortitude with which they bore them. No man of Princess Anne ever complained of the deportment of those men; that any soldier ever molested his person, disturbed his quiet, or wasted his property; that he had trodden down the grass of his fields, or traversed them, but by the paths, which he himself had made. The corn ripened around the tents of these soldiers untouched, in the midst of no ordinary privations, and a life of suffering, to which most of them were unused.

Disease made its way into their camps in various forms, and thousands ingloriously perished, of whose names no vestiges remain, but in the remembrance of their children. I have searched for their graves, but could find no trace of them except a few scattered stones, on the commons of Norfolk.

In the month of November next preceding the peace, which terminated this war, one hundred and sixty were buried, eight hundred discharged, because incapable of further service, and 2,300 returned on the sick list. These facts, Mr. Chairman, derived from an official source, were, you must well recollect, handed over to you, to serve as the basis of your argument in support of that very Defence Bill, of which, the member from Culpeper has reminded us. It was not till the close of this perilous season, or immediately before the return of peace, that any aid was ordered to our relief, from North Carolina, though Norfolk, is as much her sea-port, as ours: and her boundary crosses the canal in its vicinity.

Sir, the part which my friend from Norfolk (Gen. Taylor) who gave discipline, and character, and confidence to the militia army, I have described, has taken in this question, does equal credit to his heart and his head. It is worthy of the Bayard of Virginia, a man "*sans peur et sans reproche*." And should he fall a martyr in the cause he has thus nobly espoused, I shall envy him his martyrdom. It will be the only unkind feeling I ever felt towards him.

And why, Sir, did we defend Norfolk, at so vast a sacrifice of life and money? We could have twice burnt it down and built it up again, with the sums spent in its defence; to say nothing of the mere labor of the men whose lives it cost us.

Was it not to protect the sea-board? Those very proprietors, who now deny our equal rights, with themselves, to political power in this Commonwealth, and that too, on the very ground, which then constituted their own insecurity and danger? Was it not, that the lowland gentleman might lie down in safety, or leave his dwelling, without fear, that, in his absence, the incendiary torch might fire it, and turn his wife and children out upon the world, if the mid-night dagger chanced to spare their lives? It was not the *value* of Norfolk, but its *position*, that we maintained, for the peace of the lowlands.

If the present were a mere question about taxation we should inquire into the ability of the taxed, to pay. As it is a question of representation, we inquire into the numbers of those, who are to be represented.

My friend from Norfolk, (Mr. Taylor,) had properly illustrated the difference of these two principles of taxation and representation, by comparing them to two fountains which rise in the same glen, but pursue their way to the ocean, by different channels.

The member from Chesterfield has told us, that the figure is inaptly applied, since they both spring from the same source: and with an infelicity, which rarely occurs in his figurative language, he has spoken of a torrent of representation rolling from, and another stream of taxation, ascending to, the West. If in the operations of peace, the balance be in favor of the West, it is evidently reversed, in war, for a heavier charge than a war on our sea-board, must ever bring upon the people who live remote from the actual theatre of its dangers, cannot well be conceived.

But why disfigure a Commonwealth so fitted for union by odious lines of discrimination founded on imaginary diversities of interests? If the "Pyrennees" have disappeared, at one end of their chain, why may they not do so, along its whole extent?

Were they, however, higher than the Alps, the new distribution of political power would not transfer the majority of the House of Delegates to the West of this natural division of the territory of the Commonwealth. In a House of 120 members, 70 would remain below the Blue Ridge: and, as I have said, a majority must continue there for years to come. The lenient agency of that very time, which the gentleman from Chesterfield would invoke, to mitigate all revolutions of power, is thus assured to those feelings which neither he nor I would revolt by sudden change.

If mere difference of local interests should sever States and people, 'tis not a division of Virginia by a single mountain which would suffice.

The member from Albemarle (Mr. Gordon) has illustrated this truth, in one of the histories which he gave us of the causes of discontent on James River. Even the slave-holding country has its tobacco and its cotton staples, below the line which divides us on the present question.

It is true with all local interests, that as you enlarge their sphere of action, you reduce their force. By circumscribing their limits, you only increase their vigor. To give each interest within this Commonwealth, power to regulate itself, not four divisions—but forty, must be made. Shall we, for such reasons, sunder the land of our birth?

Mr. Chairman, said Mr. M., as I descended the Chesapeake the other day, on my way to this city, impelled by a favoring west wind, which, co-operating with the new element applied by the genius of Fulton to navigation, made the vessel on which I stood literally fly through the wave before me, I thought of the early descriptions of Virginia, by the followers of Rawleigh, and the companions of Smith. I endeavored to scent the fragrance of the gale which reached me from the shore of the capacious bay along which we steered, and I should have thought the pictures of Virginia, which rose in my fancy, not too highly coloured, had I not often traversed our lowland country, the land not only of my nativity, but of my fathers—and I said to myself, how much has it lost of its primitive loveliness. Does the eye dwell with most pleasure on its wasted fields, or its stunted forests of secondary growth of pine and cedar? Can we dwell, but with mournful regret, on the temples of religion, sinking in ruin; and those spacious dwellings, whose doors once opened by the hand of liberal hospitality, are now fallen upon their portals or closed in tenantless silence? Except on the banks of its rivers, the march of desolation saddens this once beautiful country. The cheerful notes of population have ceased, and the wolf and wild deer, no longer scared from their ancient haunts, have descended from the mountains to the plains. They look on the graves of our ancestors, and traverse their former paths. And shall we do nothing to restore this once lovely land? There was a time when the sun in his course shone on none so fair.

Let us elevate the condition of that population in Virginia, which constitutes the bone and sinew and strength of every nation. Let us lift it up to a condition above our slaves, diffuse throughout it, knowledge, which is power; and, instead of driving it, by political proscription, from our bosom, invite it from abroad.

The gentleman from Chesterfield, bound by ties that do not connect me with the world, tells us that the integrity of the Commonwealth is but the second wish of his heart—Sir, unlike him, the affections of mine centre on my country. My last wish will be like my first, for her liberty, her peace, her happiness, and as the firmest bond of all these blessings, her Union. In life, and in death as in life, such will be my prayer. Oh America! patria opima; Virginia, mater amatissima, esto perpetua!

Mr. J. S. Barbour here rose to explain:

The gentleman from Loudoun has referred, I presume, to myself, in some of the remarks which had fallen from him, in relation to the people of the West. His fervid

defence of their conduct during the last war, was wholly unnecessary. Believe me, Sir, I know too well what is due to their patriotism and bravery, ever to have entertained or expressed the slightest distrust of either. All I was endeavouring to shew, was, that there exists a diversity of interests between different parts of the State, which could not but exert its influence on their views and course of action. The West had one set of interests, the East another. The gentleman from Loudoun knows that I went with him in support of the Defence Bill. I never felt or thought that there was any deficiency manifested by the people of the West, in this season of public danger.

Mr. Mercer said he was happy to hear the gentleman express the opinion he had just uttered; but the gentleman from Culpeper must forget the tenor of his own remarks, which certainly went to convey the idea, that the people beyond the mountain not having heard the sound of hostile cannon, nor witnessed the scenes of distress occasioned by the presence of an invading enemy, did not sympathize with their brethren in the lower part of the State. He was very happy to find that the gentleman now harboured no suspicion in his breast toward his brethren in the Western part of the State.

Mr. Doddridge said he had been repeatedly alluded to in the course of this debate, as if he had contended that the Constitution was not legal and obligatory. He had made no argument nor expressed any opinion to that effect. When alluding to the circumstances under which the Constitution had been formed, he was replying to the argument of the gentleman from Northampton, who had contended that the existing Constitution, had been made "by all and for the benefit of all:" and his object was to shew, that so far from having been made by all, for the benefit of all, it had been made by a particular description of freeholders only, and for the benefit of freeholders of the same description with themselves, perpetuating the power which they themselves possessed. Mr. D. had made the statement more particularly with reference to the right of suffrage, (should the Convention ever reach that subject, of which he began to entertain some fear:) he had done it to shew that there was a numerous class of citizens who had never been consulted at all in the formation of the Constitution, and his inference from that fact was, that they had a right to be consulted now.

Mr. JOYNS next addressed the Committee.

Mr. Chairman: The subject now under the consideration of the Committee, is one of great importance to the future happiness and prosperity of Virginia; and I have to ask the attention of the Committee, for a short time, while I present to the Committee the views I have taken of this subject. In doing this, I shall not indulge the expectation that any thing that I can say will change the vote of any member of this Committee. Every gentleman in this Convention has, no doubt, maturely considered the subject, and honestly made up his opinion;—and, if the able and eloquent arguments which have already been addressed to the Committee, have been insufficient to change the opinions of gentlemen, I have not the vanity to suppose that any thing which I may say, would have that effect. This subject is interesting to the whole State, and particularly to that portion of it in which I live; and if I were to permit this question to be decided without expressing the opinions I entertain, and the reasons on which these opinions are founded, I should be wanting in duty to myself and to those who sent me here.

When I was elected a member of this Convention, Mr. Chairman, I endeavoured to persuade myself, that while it was my duty, in concert with my colleagues to watch over and protect, so far as I could, the particular interests of my constituents, yet that I was a representative, in some degree, of the whole people of Virginia, and bound to consult the interests of the whole community. I came here, Sir, actuated by a spirit of compromise toward other members of this Convention. I came here, prepared to reconcile, as far as was practicable, by mutual concessions, all sectional and conflicting interests, and to agree in the adoption of such a Constitution as we might reasonably hope would permanently promote the interest and happiness of Virginia. It was idle for any man to calculate that every measure was to be adopted precisely according to his wishes. It is by mutual concessions alone, that any beneficial results can be expected to arise from our labours. There was no subject which it was probable could come before the Convention, on which I felt more strongly actuated by a wish for mutual concession than on that now under the consideration of the Committee;—and I was gratified the other day, when my friend from Fauquier (Mr. Scott), proposed an amendment to the amendment proposed by the gentleman from Culpeper (Mr. Green), which would afford me an opportunity of manifesting, by my vote, that I was really disposed to compromise this interesting subject; and I regret that a majority of the Committee entertained different views from me relative to that amendment.

We have been told in the course of this debate by the gentleman from Albemarle (Mr. Gordon), that the amendment proposed by the gentleman from Culpeper (Mr.

Green), was incompatible with the extension of the right of suffrage. The right of suffrage, Mr. Chairman, is not by any means involved in this question, nor have they any necessary connexion. The question here is not, to whom the right of suffrage shall be granted, but in what proportions shall the political power of the Commonwealth be distributed amongst the different sections of the State: whether it shall be distributed, having reference to white population alone, by which those portions of the State which pay less than one-fourth of the whole revenue of the Commonwealth, shall have the entire control of the legislative power; or shall it be so distributed, that those who are compelled to pay more than three-fourths of the revenue, shall have it in their power to protect themselves from improper taxation. I am in favour of the extension of the right of suffrage as far, perhaps, as any man in this Convention; and much farther, I dare say, than I shall be sustained by the votes of a majority of the Convention. I am willing to extend it to all free white male citizens of this State upwards of twenty-one years of age who have committed no crimes against the State, and who actually *pay* taxes to the State or county—whether they be freeholders or not. And, I would allow to the poorest man who went to the polls, precisely the same vote, that I would allow to his wealthy neighbour who might be the master of five hundred slaves.

I shall not pretend to question the correctness of the general rule, that the majority should govern; and a majority of persons in general furnishes the best evidence of a majority of interests. Since the eloquent argument of my colleague from Northampton (Judge Upshur), most of the gentlemen who have engaged in this debate on the other side, have placed this question on the ground of expediency alone. One of the greatest errors which can be committed in the science of Government, it appears to me is, to lay down certain general fundamental principles, and, like the bed of Procrustes, compel every community to conform to them, without regard to circumstances. A Constitution, to be of any value, must be adapted to the particular circumstances and situation of the country for which it is intended. That Government which would be best for one country might be worst for another. Every man in this Convention; nay, every man, I am sure, in America, would unite in saying, that a Republican form of Government was best adapted to the situation of the people of the United States and to the individual States: but *he* would be an unwise politician indeed, who would attempt at this day to establish a Republic in Russia or Turkey; and humanity has had to mourn over the unsuccessful efforts to establish a Republic in France; and, from recent indications, we have too much reason to apprehend that Republican Government is not suited to the late Spanish possessions on this Continent. The only question that a wise Statesman should ask is, whether the measure proposed, is *best* calculated to promote the liberty, interests and happiness of the people on whom it is intended to operate as they *really are*; and not, whether the measure conforms to certain rules of *theoretical perfection*, and would be best adapted to a people such as he would have them *to be*. If this were a question between the protection of personal rights on the one hand, and property on the other, and it was impossible to reconcile the two, I should not hesitate in giving the preference to the protection of personal rights; but I humbly conceive, that there is no incompatibility in the protection of the two. Property asks not for a sword to enable it to do injury to others: it only asks for a shield to protect it from injury.

This question has been discussed, Mr. Chairman, by most of the gentlemen on one side, and by all on the other, as if the only object was the protection of the slave property of Eastern Virginia from oppressive taxation. And the gentleman from Albemarle (Mr. Gordon), has said, that no gentleman on the other side has advocated the amendment to the report of the Legislative Committee on any other ground. For myself, Sir, I have no hesitation in saying, that if there were not a slave in Virginia, or if, by the unanimous consent of the Convention, a clause were inserted in the Constitution exempting them forever from taxation, I should still think the amendment ought to prevail. The power of imposing taxes upon a community, whereby the Government can at pleasure withdraw from every individual any portion of his hard earned property, is one of the most important powers which can be conferred by the people, in their sovereign character, upon their Government. And, it is of the utmost importance, that that responsibility of public functionaries to the people for the faithful discharge of their duties, which is the life and security of representative Government, should be preserved in the fullest and most perfect degree, with respect to the power of laying taxes,—and this responsibility never can exist in a proper degree, unless those who have the power of laying the taxes are directly responsible to those who are compelled to pay them. If the report of the Legislative Committee be adopted by the Convention, then those who pay less than one-fourth of the taxes of the State would have the power of imposing taxes on the residue of the State; and the majority, who imposed the taxes, would be subject to no kind of responsibility to those who were compelled to pay the greater part of the taxes.

The wealth of a country, Mr. Chairman, depends upon the productive industry of that country; and whether these productions arise from the labour of freemen, or of slaves, they add equally to the wealth of the community at large. The tobacco of Virginia, the cotton and rice of the Carolinas and Georgia, and the sugar of Louisiana, add as much to the wealth of the nation as if they were the produce of the labour of free white men. Yet, I am still unwilling to place the slave labourer, on an equality with the white man: There are prejudices on this subject, arising from a difference in colour, and various other considerations, which are insuperable: These prejudices I feel as strongly as any man in the West; and, if the question now under consideration was, whether, in an apportionment of representation having reference to numbers, and *to no other consideration*, slaves should be included, I should feel no hesitation in saying that I would not include slaves in the enumeration.

Although the protection of slave property from the danger of unjust and oppressive taxation, be not the only object of the proposed amendment to the report of the Legislative Committee, yet the large portion of slaves held in Eastern Virginia, and the comparatively small number held in the Western part of the State, deserves serious consideration in deciding upon the subject. The slave tax is about 30 per cent. of the whole revenue of the State: they constitute one-third of the whole property of the State, and more than one-half of the property of that part of Virginia lying to the East of the Blue Ridge of mountains. We have been told by the two gentlemen from Frederick (Mr. Cooke and Mr. Powell); by the gentleman from Brooke (Mr. Campbell); by the gentleman from Albemarle (Mr. Gordon); and by the gentleman from Loudoun (Mr. Mercer), that if the white basis of representation be adopted, still the slave-holding interest would be protected—because, they say, there are a great many slaves in the Valley, where they are generally distributed amongst the people: and several of these gentlemen referred particularly to four counties in the Valley, which they say contain *great numbers* of slaves, and that the white population of these four counties added to the white population of the country East of the Blue Ridge, would make a white population of 400,000, who have peculiarly a slave interest; and the balance of the white population being only 280,000, the slave-holding interest would have a large majority, and would always have a majority. The respectability of these gentlemen repudiates the idea that they intended to deceive the Convention; and their splendid talents added to their weight of character, gives an imposing authority to every statement they make; but I think, Sir, it can be very easily shown, that these gentlemen are intirely mistaken in their calculations. The slaves constitute 38 per cent. of the whole population of the State;—and no county having less than 38 per cent. of slave population, can have such a controlling slave interest, as would induce it to unite with the slave-holding interest in other parts of the State, in resisting attempts to burthen that species of property with excessive taxes, for the relief of other property from taxation. To illustrate my idea, I will suppose that the taxes of the State are so arranged that, one half arises from land, and the other half from slaves: If these slaves be distributed in equal proportions, according to white population, amongst the several counties of the State, and it should become necessary to increase the taxes of the State, it would be immaterial, so far as intire counties were concerned, whether the increased taxation be imposed on land or slaves: But if the slaves, instead of being distributed equally amongst all the counties, should be so distributed, that one half of the counties contained three fourths of the slaves, and the remaining half contained only one fourth; and it should become necessary to increase the taxes, is it not perfectly manifest, that those counties containing only one fourth of the slaves would be interested to impose all the taxes on slaves, to the exclusion of land? There cannot be a doubt on the subject. The slaves West of the Alleghany are 82.3 per cent. of the whole population West of those mountains; in the Valley the slaves are 17 per cent. of the whole population; and in the country East of the Blue Ridge, the slaves exceed the whites.

But, Mr. Chairman, we have been told that four counties of the Valley, particularly, have a slave interest, which will induce them to unite with the slave-holders of the East in the protection of that kind of property. Let us examine whether these four Valley counties to which the people of the East have been asked to commit the guardianship of their slave property, *have* such a common interest in the subject as will render it prudent for the slave-holders of the East to choose them as guardians of that kind of property. If they *have not* such interest, Mr. Speaker, prudence would forbid their being selected as guardians. Let us say what we will of the virtue and integrity of man, the best security that can be had for another man's honesty is, to place him in a situation where it is his own interest to be honest. "Lead us not into temptation," are the words of the Saviour himself.

The four Valley counties to which gentlemen allude, are, no doubt, Frederick, Augusta, Botetourt and Jefferson. These counties contain together 20,534 slaves, and 50,241 free whites; the slaves being 27 per cent. of the whole population. These counties pay \$16,630 55 cts. of the land tax, which is equal to 9 47-100 \times per cent.

of the whole land tax, and they pay \$4,935 of the slave tax, which is equal to 4 3-10 \times per cent. of the whole slave tax. Suppose there was a proposition before the Legislature, to raise for the exigencies of the State, an additional sum of \$100,000 by taxation, and a member from the West should propose to raise this additional sum by a tax exclusively upon slaves: and a member from the East proposed to raise it intirely by a tax on land, how would these four guardian counties vote? If the additional tax be raised on land, these four counties would pay \$9,474: and if it be raised on slaves, they would pay only \$4,305. If they were actuated by that great spring of human action—self-interest, they are interested more than two to one, to impose the additional tax intirely upon slaves. If they were governed by interest alone, they would make bad guardians, and I fear the East would share the fate of too many wards.

The gentleman from Brooke (Mr. Campbell), and the gentleman from Albemarle (Mr. Gordon), have told us, no doubt to allay the apprehensions of the East, that if representation be apportioned according to white population alone, the West would lose representation in comparison with the present apportionment, and the gain would be in the slave districts. In order to prove this, they disregard the calculations of the Auditor as to the supposed population of 1829, and rely upon the Census of 1820. And the gentleman from Loudoun, (Mr. Mercer), has also told us, that the Auditor has committed a great mistake in the supposed population of 1829, as to that county; and he, therefore, has no confidence in the Auditor's calculations, but prefers to rely on the Census of 1820. The gentlemen who advocate the white basis, do not agree in the value they are disposed to place upon the Auditor's estimate of the population of 1829. A gentleman from beyond the Alleghany, whose opinions are intitled to great weight upon this and all other subjects, (Mr. Doddridge) told us, that the Auditor's calculations did not give to the country beyond the Alleghany, a greater increase of white population than it was really intitled to; and I know that other gentlemen entertained the same opinion. In fact, the gentleman from Brooke (Mr. Doddridge), in his speech the other day, rather vauntingly, said, that in thirty years the majority of the white population of the whole State would be *West of the Alleghany Mountains*: And he referred to the Auditor's estimate of the population of 1829, in support of that assertion. And he told us, too, that the white population beyond the Blue Ridge, would continue to increase until (to use his own language) "the white population East of the Blue Ridge would be but a drop in the bucket, to that of the West." The Auditor's estimate of the population of 1829, although called for on my motion, was called for on the suggestion of another gentleman from the West of the Alleghany, who was a good *Judge* of the subject, and after the Auditor had satisfied that gentleman and myself that, from the documents in his office, he could be enabled with tolerable accuracy, to estimate the population of 1829. I cannot consent to allow gentlemen the advantage in argument of relying on the correctness of the Auditor's statement one day, and then, when it suits their argument on another day, to tell us that no confidence should be placed in that estimate, and *that* the Census of 1820 should alone be relied on. If we were now about fixing the representation according to the white population, and which was to remain unchanged for ten years to come, would gentlemen then be content to rely on the Census of 1820? I presume we should then be told again that the Auditor's estimate was correct and ought to be relied on. I have but little doubt that the Auditor's estimate of the population of 1829, is very nearly correct, and I shall not hesitate to assume it as the basis of my calculations,—and let us see upon that estimate how the representation would stand in comparison with the present apportionment of representation. According to the Auditor's estimate, the whole white population of the State in 1829, is 682,261. If this number be divided by 120 (which is the number of delegates recommended by the Legislative Committee), we shall find that 5,685 are the number of free whites necessary to furnish one delegate. On this estimate, the country West of the Alleghany (containing twenty-six counties) would be entitled to thirty-two delegates,—the Valley (containing fourteen counties) to 24 1-3,—the country from the Blue Ridge to the head of Tide (containing twenty-nine counties) to 34 2-3: and from the head of Tide to the Sea Coast (containing thirty-six counties and four towns intitled to representation) to 29 delegates. If the number of delegates were reduced to 120, and distributed in proportion to the present distribution, the result would be that the first District would be intitled to 29 delegates,—the second District to 16,—the third District to 32 1-2,—and the fourth to 42 1-2 delegates. So that, on the basis of white population, in comparison with the present apportionment, the different Districts would stand thus:

The 1st District would gain	3 members.
The 2d District would gain	8 1-3 members.
The 3d District would gain	2 members.
The 4th District would lose	13 1-3 members.

So that the 3d and 4th Districts, which are slave-holding Districts, would lose 11 1-3 members; and the two Western Districts would gain 11 1-3 members.

The gentleman from Albemarle (Mr. Gordon) has told us, that the Valley and the middle country, which he calls the "heart of the State," have a majority of white population and pay a majority of taxes, and ought to have a majority of Delegates; whereas, at present they have only 86 Delegates out of 214. I agree that these two Districts ought to have a majority; and let us see how they will stand on the white basis and on the compound basis of representation. That gentleman, to insure the majority of Delegates to the "heart of the State," again refers to the Census of 1820; whereas, by the Census of 1829, which I have endeavoured to show ought to be relied upon, on the basis of white population, they would have only 59, out of 120 Delegates; and these two Districts, on the white basis, never can have a majority, because the white population West of the Alleghany, increases much faster than in the Valley; and in the other two Districts there is very little increase. The present white population of the second and third Districts together is 335,354, and the first and fourth Districts together have a white population of 346,077. It is only on the combined basis of population and taxation, that the second and third Districts can have that majority which the gentleman from Albemarle, so ardently desires they should have. On the combined basis, the first District would have 21 Delegates: the second District 21: the third District 41: and the fourth District 37; and the second and third Districts, "the heart of the State," would have, together, 62 Delegates; instead of 59 on the white basis.

The gentleman from Albemarle (Mr. Gordon), and the gentleman from Loudoun (Mr. Mercer) have also told the Committee, that if representation be apportioned according to white population alone, there would still be a considerable majority of Delegates East of the Blue Ridge. The first gentleman says the majority would be 19, and the other says it would be 20. Here again the gentlemen are compelled to resort to the Census of 1820, to sustain their positions. If, in argument, you will grant gentlemen their premises, it is very easy to prove any thing they wish; but I must again insist on holding gentlemen to the Auditor's estimate of the population of 1829. I cannot consent that they should adopt it when it suits them, and abandon it when it makes against them. Why, Mr. Chairman, should we talk about the Census of 1820, when it is manifest that no apportionment of representation under the new Constitution which may be recommended by this Convention to the people, ever can be made under that Census? The Delegates in 1830 are to be elected under the old Constitution, and in 1830 a new Census will be taken under the authority of the General Government, and the first apportionment of Delegates that can ever take place under the new Constitution, will be conformable to the Census of 1830.

The gentleman from Loudoun (Mr. Mercer) has told the Committee, that there would not be a majority of white population West of the Blue Ridge before 1850; and that the transfer of political power to the West would be gradual. This information is no doubt kindly intended by that gentleman, to allay the apprehensions of the East. While I may be disposed to admire the philanthropy which prompts the information, I cannot admit the premises necessary to enable the gentleman to prove his position. Here again, he refers to the Census of 1820. According to the Auditor's "*Census*," the white population West of the Blue Ridge, is now 319,516; and on the East of the Ridge 392,745. If the white population continue to increase in the same ratio as it has increased since 1820, then in 1835, the white population West of the Blue Ridge will be 375,310; and East of the Blue Ridge 372,293, being a majority of 3,017 West of the Blue Ridge. I acknowledge, Mr. Chairman, that on this subject I have heretofore been mistaken, and, possibly, I may have induced some others to adopt my errors. I did not suppose, until I saw the Auditor's estimate, that the majority of white population would be West of the Blue Ridge so early as 1835.

I have said, Mr. Chairman, that if there were no slaves in the State, or if by unanimous consent they were to be forever exempted from taxation, I should still vote for the amendment under consideration. Those who have the power of laying the taxes, ought to be directly responsible to those who are compelled to pay them—not merely in name, but in fact. If the report of the Legislative Committee be adopted, then taxes to any amount may be imposed, contrary to the unanimous wishes of those who pay three-fourths of the taxes, and imposed by agents who owe no responsibility, express or implied, to those who are compelled to pay the greater portion of these taxes. Like the gentleman from Hanover (Mr. Morris), I can imagine no despotism more oppressive than that which gives to one man the power of laying taxes, and imposes the duty of paying the taxes on those who have no control over laying them. Why is it, Sir, that the Constitution of the United States, and of all the several States, give the power of originating laws imposing taxes, to the most numerous branch of the respective Legislatures? It is because the most numerous branches of the Legislature are more immediately the representatives of the people; they are elected for shorter periods, and are compelled more speedily to return to the people

and give an account of their stewardship. Those who pay the taxes ought to have complete control over those who have the power of laying the taxes; otherwise the taxes, which in a free Government should be considered as the voluntary contributions of the citizen for the services of the State, would be, in fact, arbitrary exactions made by irresponsible agents. If the amendment to the report of the Legislative Committee be adopted, this salutary and necessary control will be preserved; but if the amendment be rejected, then taxes may be laid by those who are not responsible to those who are compelled to pay them.

Let us see, Mr. Chairman, what has been done by other States in this Union, in fixing the basis of representation in their respective Legislatures. We have been told in the progress of this debate, that fifteen States of this Union have adopted the white basis, without regard to any other consideration; and we have been urged to follow their example. Here again, I am sure that the honourable gentlemen who have made this assertion had no intention to deceive the Committee; but I am equally certain that they have reckoned without their hosts. Instead of fifteen States having adopted the white basis, *unqualified*, there are but six who have adopted that basis without modification. And of these six, neither of them are of the Old Thirteen States of this Union—and four of them are States created within the last few years. The only States which have adopted this basis, *unqualified*, are Kentucky, Ohio, Indiana, Illinois, Mississippi and Alabama. I must beg the indulgence of the Committee while I refer to the Constitutions of the other States, particularly on this subject.

In Massachusetts, where they have no slaves, the representation in the Senate is based intirely on taxation; and in the House of Representatives every town having 150 rateable polls is intitled to one representative; and every town having 375, is intitled to two representatives.

In Maine, every town containing 1,500 inhabitants, is intitled to one representative; and so on, increasing until a town has 26,250 inhabitants, when it shall be intitled to seven representatives; *and no town shall ever have more than seven representatives.*

In New-Hampshire, the representation in the Senate is based on taxation alone. In the House of Representatives, a town having 150 rateable polls is intitled to one representative, and a town having 450 is intitled to two.

In Vermont, towns containing 80 taxable inhabitants are intitled to two representatives; and all others, without regard to population, are intitled to one.

In Connecticut, (that land of steady habits, to which the gentleman from Loudoun wished he could transport all the members of this Convention, to witness the beneficial results of her wise institutions) each new town, *without regard to population*, is intitled to one representative.

In New York and Pennsylvania (so often referred to in a commendatory manner in this debate,) each county, however small the population, is intitled to one representative, and the larger counties to more than one—according to population in the one and taxable inhabitants in the other State. When the gentleman from Loudoun today was reading parts of the Constitutions of different States, he read that part of the Constitution of Pennsylvania which directed that representation should be apportioned according to taxable inhabitants; and the very next sentence after that read by the gentleman, commenced with these words, "Every county shall have at least one representative," &c. I am sure the omission of the gentleman to read that clause was intirely accidental: I know him to be too honorable to wish to impose upon the Committee. In New Jersey, Delaware, Maryland, and North Carolina, the representation in both Houses is apportioned by counties, without regard to numbers; and in Virginia, the House of Delegates is apportioned by counties, and the Senate according to white population. In South Carolina, the representation in both Houses is apportioned according to population and taxation combined; but every district shall have one, whatever may be the population and taxation. In Georgia, the Senate is equally apportioned amongst the counties, without regard to population; and the House of Representatives is apportioned according to federal numbers, but subject to this modification, that each county shall have at least one and not more than four members; and counties having 3,000, to have two delegates; 7,000 three; and 12,000 and upwards, four delegates. In Tennessee, both Houses are apportioned according to taxable inhabitants, including slaves. In Louisiana, the Senatorial districts are to remain forever unchanged, without regard to the increase of population. And in Missouri, each county is to have one representative at least, and the larger counties more than one, according to population. If, Sir, we are to be influenced by the example of other States, by which ought we to be influenced; by the example of seventeen States, twelve of which are old States, some of whose Constitutions have been tested by the experience of near half a century? Or, shall we follow the example of our younger sisters, some of whom are so young that they have not yet had a sufficient opportunity of testing the wisdom of their measures? The gentleman from Loudoun (Mr. Mercer) read to the Committee extracts from the Bills of Rights, prefixed to the Constitutions of a number of the States, to prove the equality of all

men, and to convince the House that the white basis, without regard to any other consideration, ought to be adopted. It is true, that seven of the States have Bills of Rights declaring the equality of all men; and that the majority have a right to alter and modify the Government as they please. Notwithstanding all these Bills of Rights we find the wise men who made these Constitutions, like George Mason and his compatriots of 1776 who made the Constitution of Virginia, wisely modifying general principles, so as to adapt them to the particular situation and circumstances of their several States; they made the coat to fit the man who was to wear it, rather than to make the coat without regard to the dimensions of the man, and compel him to wear it whether it fits him or not. Thus, Mr. Chairman, will all wise lawgivers act. A Constitution, although it may be made according to the most approved ideas of theoretical perfection, is of but little value, unless it be adapted to the circumstances of the country for which it is intended. And, cotemporary expositions of the meaning of an instrument made by the authors of the instrument themselves, are intitled to more respect than the most elaborate and ingenious essays of subsequent commentators.

We were told yesterday by the gentleman from Loudoun, that for the last seven years, there had been no State tax in Massachusetts and New Hampshire; and therefore, although they had a provision in their Constitutions for basing representation in the Senate according to taxation, it had ceased to operate in practice, and white population was now alone regarded. I am willing to follow precisely in the footsteps of New Hampshire and Massachusetts on this subject. Let us have the power of protecting ourselves from unjust taxes as long as it is necessary, and the moment those, into whose hands the political power of Virginia seems destined shortly to pass, can so wisely manage our concerns as to exempt us from taxation, I for one, am ready to adopt the basis of white population alone. Yes, Sir, I am prepared this day to agree to it on these conditions; and on our own principles, if the amendment prevails, as soon as we have no taxes to pay, white population alone will be regarded.

In order to show the inequality of taxation, and the necessity that should induce those sections of the State paying the greater part of the taxes, to adopt the proposed amendment, I beg leave to refer to some statements and calculations I have made on this subject, founded on the Auditor's report. The whole revenue of the State *paid into the public treasury* in the year 1823, and arising from taxes on land, slaves, horses, carriages and licenses, amounted to \$335,429 50. If this sum be divided by 682,261, which is the whole number of white inhabitants, according to the Auditor's calculation, it will give 56 cents 5 mills as the average taxes paid by each white person in the State. In making this calculation, I have excluded free negroes from the estimate of persons paying taxes to the State, because I have no doubt of the fact, that throughout the State, free negroes contribute very little indeed to the public revenue; so little as not to affect the accuracy of my calculations. The county in which I reside, contains, unfortunately for us, the one-twentieth part of the whole free negroes of the State, and the free negroes of that county do not pay \$30 of revenue to the Commonwealth; and, from the information of other gentlemen, I believe it will be found that free negroes are equally worthless throughout the State. If any portions of the State have a more respectable class of free negroes than we have, I congratulate them. With us, instead of contributing to the wealth or revenue of the State, they are perfect nuisances.

While the average taxation for each white person in the State is 56 cents 5 mills, the average paid in the different districts is as follows:

In the first district, (West of the Alleghany) 18 cents 6 mills; in the second district, (the Valley) 41 cents 2 mills. The whole country West of the Blue Ridge, averages 28 cents 4 mills.

In the third district, (from the Blue Ridge to tide) 76 cents 2 mills; in the fourth district, (from the head of tide to the sea) 87 cents 2 mills. The average of the whole country East of the Blue Ridge is 81 cents 2 mills.

There is no subject of taxation on which the West pays as much tax per head, according to white population as the East. To show this, I must beg the indulgence of the Committee, while I refer to another calculation I have made:

The whole land tax *assessed* in the State (*but not all paid*) amounts, for each white person, to 25 cents 7 mills.

In the first district, for each white person, it amounts to 9 cents 2 mills; in the second district, for each white person, it amounts to 24 cents 6 mills. West of the Blue Ridge, the average is 15 cents 8 mills.

In the third district, for each white person, it amounts to 33 cents 8 mills; in the fourth district, for each white person, it amounts to 34 cents 7 mills. East of the Blue Ridge, the average is 34 cents 4 mills.

So that for every dollar of the land tax for each white person paid by the people West of the Blue Ridge, those on the East side pay \$2 13 cents for each white person.

The slave tax assessed amounts, for each white person in the State, to 16 cents 8 mills.

In the first district, it amounts to 2 cents 3 mills; in the second district, it amounts to 6 cents 2 mills. West of the Blue Ridge, it averages 4 cents.

In the third district, it amounts to 23 cents 5 mills; in the fourth district it amounts to 27 cents 6 mills. East of the Ridge, it averages 23 cents 1 mill.

So that the whole country East of the Blue Ridge pays, on an average, for each white person, a slave tax amounting to more than seven times as much as is paid by the whole country West of the Blue Ridge—and more than twelve times as much as the country West of the Alleghany.

The taxes assessed on horses and carriages amount, for each white person in the State, to 7 cents 7 mills.

In the first district, it amounts to 5 cents 1 mill; in the second district, it amounts to 7 cents 4 mills. West of the Ridge it averages 6 cents 2 mills.

In the third district, it amounts to 9 cents 2 mills; in the fourth district, it amounts to 9 cents. East of the Ridge, it averages 9 cents 1 mill. Which is fifty per cent. more than the average to the West of the Ridge.

Taxes on licenses average throughout the State, for each white person 11 cents 8 mills.

In the first district, the average is 4 cents 7 mills; in the second district, the average is 7 cents. West of the Blue Ridge, the average is 5 cents 7 mills.

In the third district, the average is 11 cents 2 mills; in the fourth district, the average is 24 cents. East of the Ridge, the average is 17 cents. Which is more than three times as much as the average to the West.

It thus appears, that on every subject of taxation, the country East of the Ridge pays a great deal more for each white person, than is paid to the West. Even of the land tax, the poor and worn out country from the head of tide to the sea coast—a country which has been settled for two hundred years, and has been suffering under a most injudicious and ruinous system of agriculture, for each white man, the land pays near fifty per cent. more than is paid in that Valley, which we have been told, and no doubt correctly, is the finest Valley on the face of the globe.

But if the slave tax be rejected intirely from the estimate, it will be found that of the other taxes *assessed*, the different districts will stand for each white person thus: The first district, 19 cents; the second district, 39 cents; the third district, 54 cents 2 mills; the fourth district, 67 cents 7 mills. The average West of the Ridge, 27 cents 7 mills; and the average East of the Ridge, 60 cents 5 mills. It thus appears, that for every dollar of taxes (exclusive of slave tax) assessed for each white person West of the Alleghany, there are about \$3 50 cents assessed on each white person in the tide water district—and for every dollar for each white person (exclusive of slave tax) assessed on the whole country West of the Blue Ridge, there are \$2 18 cents assessed on each white person East of the Ridge. And if the slave tax be included, it will be found that the disparity is much greater. If we examine the amount of taxes paid into the Treasury, from some separate counties, we shall find the inequality to be still more glaring. In the large counties of Monongalia and Harrison, lying to the West of the Alleghany Mountains, the average taxation for each white person is 13 cents 5 mills. In Powhatan and Nottoway, lying East of the Ridge, the average of the counties is \$1 33 cents 2 mills.*

I will now proceed to examine, Mr. Chairman, how the representation on the white basis will stand in comparison with the taxes paid in different Districts of country. The whole amount of taxes *paid into* the Public Treasury, per Auditor's statement, amounts to \$335,429 50 cents. If this sum be divided by 120 (the number of Delegates recommended by the Legislative Committee) it will give \$3,211 91 cents as the average taxation paid by the constituents of each Delegate in the State. Instead of the constituents of each Delegate paying this sum, they will pay as follows, viz:

In the first District, for each Delegate will be paid	\$1,055 32
In the second District, for each Delegate will be paid	2,340 90
In the third District, for each Delegate will be paid	3,954 34
In the fourth District, for each Delegate will be paid	4,980 06

From this statement it will appear that the constituents of each Delegate in the Tide Water District, pay nearly five times as much taxes, as will be paid by the constituents of each Delegate West of the Alleghany mountains. I will now show how it will stand in regard to some individual counties. In Monongalia and Harrison together, the white population amounts to 26,243, and they together pay taxes to the amount of \$3,553 02. For a Delegate from these counties, therefore, their constitu-

* In Grayson county, the average taxes paid for each white person, is 10 cents. In Giles, 13 cents; in Lewis, 12½ cents; in Preston, 12 cents; in Logan, 9½ cents; and in Nicholas, 8½ cents.

ents would pay a tax of only \$768 71.* In Powhatan and Nottoway together, the white population is 5,434, and the taxes amount to \$7,238 51. For a Delegate from these counties, the constituents would pay a tax at the rate of \$7,572 85. The constituents of a Delegate from Powhatan and Nottoway, would therefore be compelled to pay nearly ten times as much as the constituents of each Delegate from Monongalia and Harrison : and the average paid by the constituents of each Delegate in the Tide Water District, would be near seven times as much as would be paid by the constituents of each Delegate from Monongalia and Harrison.

In order to render the representative really and effectually responsible to the constituents, in the exercise of the important power of taxation, there should not be a great disparity in the burthens imposed by any proposed system of taxation on the aggregate constituents of each delegate : the disparity should never be greater than is produced by a combination of persons and taxation. But on the white basis, as applied to the situation of Virginia, while a member West of the Alleghany on the principles of taxation heretofore adopted (and the East cannot have any reason to calculate on any change of that system being made beneficial to them) votes to impose a tax of one dollar on his own constituents, he at the same time votes to impose a tax of near five dollars on each of the constituents of every delegate from the tide water country ; and when a delegate from Monongalia or Harrison votes to impose a tax of one dollar on his own constituents, he at the same time votes to impose a tax of near seven dollars on the people of the tide water country, and near ten dollars on the people of Powhatan and Nottoway. Under such an inequality of taxation and representation, the responsibility of the representative to his constituents, is merely nominal. The gentleman from Albemarle (Mr. Gordon,) told us the other day, Mr. Chairman, that there was a district of country in the neighborhood of Richmond, having twenty-nine delegates, which did not pay as much taxes, and had not as many inhabitants as another district of country at the foot of the Blue Ridge, having only ten delegates. This, I admit, as the gentleman tells us, is a disease of the body politic, and *this* the gentleman from Albemarle proposes to cure by the application of the white basis, as a panacea. But, I think, from the analysis which I have given of the remedy, it will be found that, like many quack medicines applied to the human body, it only serves to make the patient worse.

Mr. Chairman, although we may talk a great deal about our disinterestedness, yet if we will examine ourselves, and the suggestions of our own hearts, we shall be very apt to find, that self-interest in some degree actuates us even when we appear to be the most disinterested and patriotic—and we are very apt to calculate how particular measures would operate at home. I confess, Mr. Chairman, I have examined, what would be the effect of the white basis upon the district in which I live : and I dare say, other gentlemen have made similar calculations as to their respective districts. I think it not improbable that my friends from the West, who I have no doubt are as honest and disinterested as any men upon earth, have calculated the relative operation of the white basis and compound basis in their section of country—and if they have not, there is a marvellous coincidence of opinion amongst them and acting intuitively in the direction their own interests would point out.

If the white basis be adopted, as gentlemen contend it should be, in both branches of the State Legislature, and the report of the Legislative Committee, recommending that the number of Senators should remain at twenty-four, be adopted, then according to the supposed population of 1829, 25,425 white inhabitants will be necessary to intitle a district to a Senator. The Accomack Senatorial district would require a considerable addition to give it a sufficiency of white population to intitle it to a Senator. Having regard to contiguous territory, I propose to add the counties of York, Elizabeth City, Warwick and Essex, and the whole district would then contain only 247 white inhabitants more than the number required. This district, thus enlarged, pays a revenue of \$19,491 08, while the average which would be paid in each Senatorial district West of the Alleghany, would be only \$5,276 60, and in the district of Harrison and Monongalia only \$3,843 55.

Although the Accomack district shows a striking inequality in taxation and representation compared with some other districts, yet there is another district in which the inequality is much greater. There is a district of country, Sir, not fifty miles from Richmond, in which a Senatorial district composed of contiguous counties (on the basis of white population, and the number of Senators being retained at 24,) would pay at the same rate of taxation paid in 1828, within less than \$600 of as much revenue on lands, slaves, horses, carriages and licenses, as the whole country West of the Alleghany mountains, paid in 1828, on the same articles ; that is the Chesterfield district. This district is now composed of the counties of Chesterfield, Amelia, Powhatan, Nottoway, Cumberland and the town of Petersburg. This district now

* In Nicholas county, the taxes are at the rate of \$466 for a delegate ; in Logan, \$540 ; and in Grayson \$568 50.

contains 24,572 white inhabitants; and in order to bring it up to the number, which will be required on the white basis, I propose to add the adjoining county of Lunenburg. The district would then have within nine of the number of white inhabitants required for a Senator; and the revenue paid from that district in 1823, amounted to \$33,194 80, on the articles enumerated above, while the whole country West of the Alleghany only paid \$33,770 14 on the same articles, being an excess of only \$575 34.

By an examination, I have made in the Auditor's office, I have ascertained some facts at the result of which I confess I was myself astonished. From the examination and calculations I have made in the Auditor's office, I think I can make it satisfactorily appear to the Convention that the whole country West of the Blue Ridge, from the Auditor's report of the taxes on lands, slaves, horses, carriages, and licenses, does not contribute one cent to the general revenue of the State for general purposes, but on the contrary is largely in arrear; that is to say, they do not pay as much revenue as their own citizens receive back as members of the Assembly and for claims and services which may be considered of a local character. The Valley, taken by itself, I admit, pays a large surplus; but the country beyond the Alleghany does not pay much more than half enough for its own purposes; and by adding the two districts together, there appears to be a considerable deficiency.

The expenses of the General Assembly—Commissioners of the Revenue and Clerks for examining Commissioners' books—Criminal charges and Guards—Contingent expenses of Courts—Militia, for Adjutants, Brigade Inspectors, &c.—Comparing Polls—Salaries of General Court Judges and Chancellors, amount, rejecting cents to about \$259,573. If this sum be divided amongst the different sections of the State, according to counties equally, it will be found that the country West of the Blue Ridge receives \$97,035, and the revenue paid West of the Ridge, (according to the Auditor's report to the Convention, above referred to,) amounts to \$90,732—being \$6,303 less than it receives. In making the calculation of the sum received by each section of the State by counties, the result is favorable to the West; because their members of the Assembly, Judges, and Guards attending convicts, receive a great deal more mileage than is received by the Eastern half of the State. In making this calculation, I have omitted the salaries of the Governor and Council—Judges of the Court of Appeals—Attorney General—Auditor and Treasurer, and their Clerks—Public Guard at Richmond and *Lexington too*—Contingent fund—and in fact all expenses which can be regarded of a general character. To this deficiency of \$6,303, add for Lunatic Hospital at Staunton \$7,500, and also add \$8,374 for the Literary Fund, (being the difference between \$18,968 of the annual appropriation of \$45,000 for Primary Schools received by the West, according to the ratio of white population by which it is distributed, and \$10,594 for the amount paid by the West, on the supposition that that fund was raised from the different parts of the State in the same proportion that the revenue is now paid) and we have the sum of \$22,177, received every year by the country West of the Blue Ridge from the Treasury more than they contribute, according to the Auditor's report, without charging them with any part of the expenses of a general character.*

If the basis of white population be adopted, the country West of the Blue Ridge, which is now a charge of \$22,000 annually, for their individual purposes on the rest of the State, will have immediately nearly one half of the delegates in the State Legislature; and, after 1835, will have a majority of delegates; and will have the power of imposing taxes at pleasure on the rest of the State. With these facts before us, can it be expected that Eastern Virginia, if there was not a slave in the State, could consent to give to their fellow citizens of the West the absolute and irresponsible control of their property. I think not. For myself, I confess that I am not willing to do it.

We are told, Mr. Chairman, by our Western friends, that the people of the East should rely on the integrity and honesty of their brethren of the West, and that the restraints of conscience will be sufficient to prevent any oppression of their Eastern brethren. I have no doubt the people of the West are as honest as any people on earth, and a gentleman from that country told us a few days ago that they were *peculiarly honest*. I know them to be honest, brave and patriotic; but I know they are also *men*, and subject to the infirmities of poor fallen man—I would not trust Aristides himself to tax me, unless he were responsible to me for the faithful execution of the trust. It was said, by one of the wisest statesmen America ever produced, that *faith* was necessary to salvation hereafter, but in this world *jealousy* was the best

*The tax on law process was not included in the Auditor's report to the Convention, and is not included in this calculation. It has since been ascertained that the whole amount of the tax on law process paid into the public Treasury from the country West of the Blue Ridge in the year 1828, was \$7,638 61. If this sum be deducted from \$22,177, there will still be a deficiency of \$14,538 39, without taking into the estimate any appropriation for Internal Improvements West of the Blue Ridge—The precise amount of deficiency was not deemed important; the principle object was to show, what is believed to be a fact, that the whole country West of the Blue Ridge did not pay as much into the Treasury as it received back.

security for the preservation of man. I have no fears of private property being endangered from individual rapine. No, Sir, not the slightest; but I am unwilling to subject property to taxation by agents who are not responsible to those who are compelled to pay the taxes.

This Hall, seems to me, Sir, to be the last place in America in which this doctrine of political faith ought to be held out. This Hall has been repeatedly made the theatre on which the ablest men Virginia ever produced, have eloquently appealed to their fellow citizens to resist the usurpations of the General Government in violation of the Constitution of the United States. For thirty years, the violations of that Constitution have been the theme of complaint by Virginians. We are told that the Constitution has been twice violated by the establishment of the Banks of the United States—has been violated by the Alien and Sedition laws—and by the whole system of Tariff laws for the protection of domestic manufactures. These violations, too, are said to have been committed by those who were bound by the solemn obligation of an oath, to support the Constitution. Prudence forbids my inquiring, here, whether these complaints be well founded or not; it is enough to know that they exist to prevent Virginians from trusting to a sense of honour and the restraints of conscience alone, to prevent men from pursuing their own interests when there are no Constitutional provisions in the way, and when their own discretion is the sole measure of their power. What is it that induces one part of the country to support and another to oppose the Tariff laws? Is it not probable that interest has something to do with it? There is no doubt of it.

It has been frequently said in the progress of this debate, that the object of Western gentlemen in wishing the white basis to be established, was to enable them to obtain the passage of laws for the promotion of a system for the internal improvement of their country. I thought the magnanimity and candor of gentlemen would prevent them from denying that that was one of their primary objects. What else can be their object? Does any gentleman pretend that the security of personal rights requires the adoption of this principle? Is it mere theoretical perfection they aim at? Or is it not rather some *practical* advantage, which they expect to result from it? I had like to have said, is it not self interest, that in *some degree* prompts them?

I know, Sir, that some of the leading politicians of the West have the promotion of internal improvement greatly at heart. I mention this in no reproachful spirit—it is honorable to them—and if they did not wish to improve their country, and facilitate the means of intercourse by roads and canals—they would be unworthy of those salubrious hills and fertile vallies with which their delightful region abounds. I am myself a friend to internal improvement. I consider that every road and every canal, connecting the East and the West, is a strong bond of union—a union which I hope may be perpetual. If you make it the interest of men to be united, they will be very apt to remain united; and if you make it their interest to be separated, nothing but the strong arm of power can hold them long together. If I were a member of the Legislature, I would grant pecuniary assistance to my Western fellow citizens, in no grudging spirit, for the improvement of their country. But while I declare, with perfect sincerity, my willingness to aid my fellow citizens of the West in this great work of internal improvement, I want those who are to pay the expense to have the power of judging and deciding *when, for what purpose*—and to *what extent* they will contribute to that object. No one is so competent to decide upon the ability of a man to pay, as that man who is compelled to pay. And no person should have the power of deciding how much shall be paid, and for what purposes, except the tax-payer himself, or his immediate and responsible representative—and least of all, should the power of imposing the taxes be given to those who are directly interested to make large impositions.

The gentleman from Brooke (Mr. Doddridge) told us, that the masters of slaves in the East, wished their fellow citizens of the West to bow their necks and become political slaves—and that if the amendment proposed by the gentleman from Culpeper prevails, the West will forever be subject to the political power of the East. With due respect to that gentleman, I must beg leave to differ from him. If the white population of the West continues to increase as rapidly hereafter, as it has done since 1820, and the taxes for each white person in the different sections of the State shall be the same they now are, then, on the combined basis, in 1836 one half of the delegates will be West of the Ridge, and one half East; and in 1857, the majority would be West of the Ridge. When the population of the West shall so increase that the majority of political power shall be West of the Blue Ridge, that country will not be near so populous as the Eastern country now is. The trans-Alleghany district would then have about 17 inhabitants to the square mile, and the Valley about 26: and at present the middle country has 28, and the old and *impoverished* tide water country 33 to the square mile. If other gentlemen are disposed to object to this estimate of the future population of the Western sections of this State, my friend from Brooke can-

not object to it, because, it was in that same speech he told us that in thirty years the majority would be West of the Alleghany, and the population of the East would be to the West but as a "*drop in the bucket.*"

Although, Mr. Chairman, I decidedly prefer the combined basis to the white basis of representation, yet I should be willing to abandon it in favor of a *graduated* county plan of representation, if such an one can be adopted as will protect those who pay the taxes from oppressive burthens. Many of the counties of Virginia have been in existence for 200 years, and the people have been so long in the habit of forming county associations, and having separate representation, that no plan could be acceptable to the people, which broke up these ancient county boundaries. I would adopt a *graduated* county representation, for the same reason that induced George Mason and the other wise men who formed the Constitution of 1776, to depart in the Constitution from the *literal* meaning of the Bill of Rights: I would do it, because it is best adapted to the situation of Virginia. By this plan, the political power of the country will gradually pass to the West, as the wealth and taxes of that country increase; and as the increasing population of that country shall render the formation of new counties necessary in that section of the State; while no new counties would be formed to the East.

I am sorry, Mr. Chairman, that I have detained the Committee so long at this late hour of the day; I thank the Committee for their attention, and will conclude with expressing the ardent wish that this important question may be so settled as will be satisfactory to the whole people of Virginia, and will permanently promote their prosperity and happiness.

Mr. Joynes having resumed his seat, the Committee rose, and thereupon the House adjourned.

FRIDAY, NOVEMBER 6, 1829.

The Convention met at 11 o'clock, and its sitting was opened with prayer by the Rev. Mr. Lee of the Episcopal Church.

Mr. Townes of Pittsylvania, submitted a resolution, which, if the Convention thought worthy of its attention, he hoped would be referred to the Committee of the Whole.

This resolution, read by the Clerk, is as follows:

"*Resolved*, That all propositions for laying the taxes, or appropriating the public money, or for the loan of money upon the credit of the State, the votes of the members of both branches of the General Assembly, representing the divisions of the State hereafter mentioned, shall avail, in proportion to the amount of public revenue collected in each division of the preceding year. A majority of the members from each division, shall give the vote of the division; to which end, that part of the State which is composed of the counties of ———, shall be one division; that part which is composed of the counties of ———, shall be another division; that part which is composed of the counties of ———, shall be another division; and that part which is composed of the counties of ———, shall be another division."

Mr. Townes moved, that the resolution be referred to the Committee of the Whole, which was agreed to.

The President then submitted a letter from the Presbyterian Synod of Virginia, (which had just had its meeting in this city,) expressing their cordial concurrence in the principles of toleration, which had marked the proceedings of the Convention. This letter was read as follows:

"At the Sessions of the Synod of Virginia, held in the First Presbyterian Church in the city of Richmond, on the 31st of October, A. D. 1829, the following resolution was *unanimously* adopted:

"*Resolved unanimously*, That the Synod of Virginia have observed with great satisfaction, that the Convention now assembled to form a new Constitution for the People of this Commonwealth, are proposing and doubtless intending to preserve and perpetuate the sacred principle—*Liberty of Conscience*—declared in the Bill of Rights and developed in the Act establishing Religious Freedom, as a part of the fundamental law of the land; and they do hereby solemnly proclaim, that they continue to esteem and cherish that principle for which the Presbyterian Church in this State, and throughout the United States, have ever zealously and heartily contended, as the clearest right and the most precious privilege that freemen can exert.

"*Resolved*, That John H. Rice, D. D. Conrad Speece, D. D. and William Maxwell, be a committee to communicate a copy of the foregoing resolution to the President of

the Convention, to be very respectfully submitted to that body at such time as he shall deem most proper and convenient.

“WM. HILL, *Moderator*.

“FRANCIS M'FARLAND, *Clerk of Synod*.”

On Mr. Naylor's motion, this paper was laid on the table—Mr. N. moved also to have it printed, and on taking the question, the voices seemed to be against it: on Mr. Naylor's saying, that he would be content with the spreading of it on the Journals of the Convention, no count was taken.

The Convention having gone into Committee of the Whole, Mr. Powell in the Chair:

MR. FITZTUGH addressed the Committee:

I had determined, Mr. Chairman, to take no part in this discussion, but to give a silent vote on the question before you, and to rest my justification for doing so, on the character of this body. Circumstances, however, have recently occurred, which have changed my determination. My sentiments, at all times fully, fairly, and freely expressed, and on no subject more fairly or more fully expressed than on this, have, it seems, become a matter of speculation amongst those whom I have the honor to represent. By what agency this has been effected, I have not yet been able to learn. Nor is it material. I know very well, however, the means by which an honorable and high-minded people may be disabused, in relation to a faithful representative; and, if in seeking to employ them on the present occasion, I should seem to be offering instruction to the venerable men around me, who are so much better fitted by their age, their wisdom, and their experience, to give, than to receive instruction, I trust I shall find a sufficient apology with them at least, in the peculiarity of my situation.

I am an advocate, Sir, for the resolution of the Legislative Committee. I am so, because I believe its design to be, what I am sure its effect must be, so to organize the Government of the State, that its future laws shall emanate from a majority of its recognized voters. In declaring my preference for this principle, I hope to relieve myself from the imputations so profusely cast upon its advocates, by disclaiming all authority for it, as derived from the laws of nature, and all support for it, founded on metaphysical abstractions. I view it, on the contrary, as one of those plain and practical principles, which the common sense and experience of mankind have almost constituted into a political axiom.

Let me not be understood as wishing to impair, in the smallest degree, the character of the Bill of Rights. No, Sir. I recognize almost all its principles, when practically construed, as sacred. All men, for instance, are by nature “equally free and independent.” But, God forbid that I should so far disregard the lights of reason and of common sense, as to infer from hence, a political equality that must accompany man through all the various modes and changes of political society. Political right, Sir, or more properly, political power, is the creature of Convention, and the very same instrument that ascribes to all men a perfect equality in the formation of this Convention, recognizes in the community of its creation, a perfect right not only to establish that Government, which it deems “capable of producing the greatest degree of happiness and safety,” but to change it “whenever found inadequate or contrary to the purposes for which it was intended.”

When, then, we speak of the natural equality of man, we mean only that no one, in the original organization of Government, can claim a natural superiority to another; that all may enter, or refuse to enter, into the compact proposed, as to them may seem best; and that they may, in the language of the Bill of Rights, select that Government, which they deem “capable of producing the greatest degree of happiness and safety.” The relative power of each, is of course to be determined by the compact itself; and all that can be asked on this subject, is, that it should be regulated by reason and justice.

With the gentleman from Orange, (Mr. Barbour,) I agree in regarding as the wisest political maxim ever uttered, the declaration of Solon “that he had given to the Athenians, not the best Government *he* could have framed, but the best *they* were capable of receiving.” This, in truth, is the foundation of all good Government. In opposition to the gentleman from Northampton, (Mr. Upshur,) it admits the existence of principles in politics. It recognizes a standard in Government, as well as in morals and in taste; and it recognizes also, the propriety of varying from that standard, as circumstances may require.

With these admissions on my part, Sir, I only claim from gentlemen opposed to me, the acknowledgment, that of all forms of Government, the Republican form is best; that in the exercise of its power, all other things being equal, the supreme authority should be vested in the majority, rather than in the minority; and that as all departures from this principle are evils, they should go no farther than may be re-

quired by the actual necessity of the case ; and this enables me to proceed at once to the practical consideration of the question before us.

The resolution of the gentleman from Culpeper, (Mr. Green) proposes so to amend the report of the Legislative Committee, as to base representation on population and taxation combined. For the present, it is true, it embraces but one branch of the Legislature ; but I feel myself justified in inferring from the arguments urged in its support, both here and elsewhere, that the real design is to organize the whole Legislative Department on this principle ; and of course to transfer to a minority of the recognized voters of the State, the exclusive power of enacting all the laws of the State.

When a proposition of this extraordinary character, totally at war with the principles I have heretofore sustained, is made, I must be pardoned for examining both its extent and the reasons by which it is supported, before I yield it my assent. I lament that in doing so, I shall be compelled to resort to any thing in the shape of statistical exhibits.

I know very well, that in debate, statistics are always disgusting, and seldom efficient ; but I feel, that on the present occasion, I cannot more clearly illustrate the propositions I mean to sustain, than by a few short and simple details, extracted from the reports of the Auditor.

If a line be drawn from the waters of the Chappawamsic, (a stream insignificant in itself, but rendered classic by the eloquent allusions so often made to it elsewhere,) to the southwestern corner of the county of Patrick, the State will be thrown into two divisions ; each embracing eleven Congressional Districts. And if, as I understand from those who have made the calculation, a representation based on Federal numbers be but little different from a representation based on population and taxation combined, each of these divisions will be entitled, on the principle of the amendment, to an equal number of representatives in the future Legislature. But the documents supplied us by the Auditor shew, that while the western division, embracing among others the District I have the honor to represent, contains 349,720 white inhabitants, the lower or Eastern division, contains only 253,361 ; leaving a balance in favour of the former, of 96,369.

I think it proper to remark, in relation to this statement, that it is derived from the Census of 1820, as presenting the only authentic source of information on this subject. And I have felt the less difficulty in resorting to it, rather than to the uncertain calculations of the Auditor, as to the probable population of the State in 1829, because, although the use of the latter might have occasioned a little difference of result in figures, it would not have affected, in the smallest degree, the principle for which I am contending.

But the subject may be presented in a still stronger point of view, by a reference to the relative vote of the two divisions. I find that on the Convention question, the Western division gave 23,096 votes ; while the Eastern gave only 15,437 ; leaving a majority in favour of the former, of 7,559. An idea, I know, at one time prevailed, that a large number of bad votes had been given in the Western country, and that the expression of public opinion on that occasion, furnished of course no fair test of the relative strength of the different parts of the State. But it so happens, that the vote of the two divisions was very nearly in proportion to their population in 1820. Whereas, if the relative increase of population has been as much greater in the West, as has been supposed, and a full vote had been taken, the majority ought to have been very far beyond what was actually obtained.

But taking the case as it is, it presents this obvious result : that 23,096 voters in that division of the State from which I come, are, on the plan of the gentleman from Culpeper, to elect no more representatives in the legislative body than 15,436 in the lower division. In other words, that sixteen votes *below* tide-water, are hereafter to outweigh in the political scale, twenty-three votes *above* tide-water ; and that solely on account of their superior wealth.

I will not stop for the present, to inquire whether this be reasonable and just ; but I do ask, in the same spirit in which the question was propounded by the gentleman from Norfolk, (Mr. Taylor,) whether such an arrangement of political power would be consistent with the republican principles of our Government ? If it were proposed to introduce it into our county elections, to graduate the influence of votes by the wealth that accompanied them, to give to sixteen affluent men the power to select their favorite representatives in opposition to the united voices of three and twenty of their poorer neighbours, can there be a doubt of the spirit in which it would be met ? Would it not encounter a tone of indignant remonstrance, in every corner and section of the State, mingling itself, as well with the lowland wave, as with the mountain torrent ?

And is the principle varied ? Is its enormity lessened ? Are its evils avoided by the sectional character with which it is proposed to invest it ? To my mind, Sir, this is its most objectionable shape. When inequalities are created amongst those who are

living in constant communion with each other, and whose general interests are one and the same, the spirit of oppression is controlled by the influence of social intercourse; and the lust of power, if it yield not to the suggestions of patriotism, is lost amid the calculations of extended and uniform interests.

But when these inequalities are sectional; when the few in one quarter are empowered to control the many in another; where, to what benignant influence are the latter to look for protection to their feelings and their interests? Not to the justice and magnanimity of those in power; for we have been emphatically told by gentlemen, that interest is the ruling, if not the only spring of action to man; and surely they will not ask from the majority, a confidence, on which, from the beginning, they have refused to rely. Nor can that majority depend for security, on the prevalence of a general interest throughout the country; for the very concession demanded of them rests for its justification on the existence of separate and distinct interests.

But, again, Sir, if sixteen voters are, by the instrumentality of wealth alone, to be made superior to twenty-three, where are you to stop? Where are you to draw the precise line of demarcation to Republican Government? Must not the same principle, under a change of circumstances, concentrate power in yet fewer hands? If, as the gentleman from Northampton (Mr. Upshur) supposes, a majority of interests must always prevail, may not that majority, which is now confined to sixteen in thirty-nine, attach itself, in the progress of individual accumulation, to nine, to three, or even to one? And when, under the influence of their favorite principle, power shall be thus concentrated, shall I be told that we are yet a Republican people? I will not say, that in the progress of events, such a change in our Government may not become necessary. I will not say, that a state of things might not be imagined, in which I myself should be constrained to vote for it. But the same page that would contain the record of my vote, would present in connection with it, the declaration that Virginia was no longer fitted for a Republican Government. But suppose that in all this I am mistaken, and that our Republican principles are not endangered by the proposition of the gentleman from Culpeper. We are certainly about to depart, and in no measured degree, from that plain and simple rule of Government, sustained by expediency, no less than by reason and justice, which confides the power of legislation to a majority rather than a minority. Is there any reason for this departure? And if there be, is it not now proposed to go far beyond what the necessity of the case requires? The lower division, to which I have referred, it is acknowledged, contains a larger amount of property and pays a greater proportion of taxes than the upper. (the excess about \$54,000,) and hence it is inferred, that unless the power contended for, be obtained, property will be without an adequate protection. If this can be made manifest, I pledge myself to abandon the principles I have brought with me to this discussion, and to go along with, and under the guidance of, the gentlemen from below.

Security to property, Sir! who does not feel its necessity? Who of the numbers that are present, does not concur with the gentleman from Northampton, in thinking that security to property is the most efficient, if not the only security to personal rights? Is it of any consequence to me to be able to keep my body beyond the limits of a jail, to roam where I please, to do what I please, or even to contribute by my vote to organize the Government under which I am to live, if that very Government is to be empowered, whenever it shall think proper, to wrest from me the means of my subsistence, and to throw me poor and penniless on a heartless world!

No, Sir, the property of the country ought to be, and must be protected, at all hazards; but let gentlemen beware, lest in providing for its security, they expose it to dangers that do not naturally surround it; lest in attempting to throw around it the robes of protection, they incautiously invest it with the shirt of Nessus. To a certain extent, property carries within itself the means of its own protection. Not in its corrupting influence, as referred to by the gentleman from Northampton; but in the facilities it affords for acquiring knowledge and diffusing benefits. It ought to be the aim, as it is within the scope of political institutions, to fortify and strengthen this power of self-protection. Let them guard it by just regulations against improper invasions. Let them increase its facilities for action, in all cases where its aim is to procure legitimate advantages to its owner, or gratuitous benefits to the community in which it exists. And let it be limited in its power of corrupting and oppressing, not by giving to it political power, but by rendering it amenable to the majesty of the laws it would violate, and to the indignant justice of the people, whose honesty it would corrupt.

But this is not all. I would not stop here, even though in proceeding farther, I may stray from the ranks in which I have hitherto been fighting. I would provide for the protection of property in the very foundations of Government. I would furnish to it, that very security, modified in form only, to which the gentleman from Hanover appealed, as an evidence of the sentiments of our forefathers. With them, I would commit the right of suffrage to such only as "could give evidence of permanent common interest in the community." I would allow no man to participate in

laying the taxes, who did not also participate in paying them. This I hold to be the best security for property; a security which gives to it the only political power to which it is entitled, or with which it can be safely entrusted. Here then, let gentlemen plant their standard; here unfurl their banner; and they will draw around them, if not all, a very large proportion of the intelligence as well as the property of the State.

But this general security to property, I am told, is not the object aimed at; and that nothing is accomplished while the many are authorized to levy on the few, a heavier tax than they themselves are required or have it in their power to pay. The gentleman from Hanover, indeed, has gone so far as to declare, that this is the very principle, against which, our ancestors so gallantly and so successfully contended; and that it constitutes in fact the very consummation of tyranny. And does the gentleman really think, that if the Government be organized as we propose, the people of the lower country will stand to their Western brethren, in the same relation that our forefathers occupied towards Great Britain—or to use his own words, that we now occupy towards the Government of Ohio? Will he consider himself taxed without his consent, because his representative may be ranked among the minority in the legislative vote—or because some particular tax may possibly bear harder on himself or his county, than on other parts of his State? If so, we have hitherto lived under the rankest despotism; for it will be found by reference to the tabular statements of the Auditor, that the middle country lying on either side of the Blue Ridge, while it possesses a large majority of the property of the State and is annually paying nearly \$30,000 more than the rest of the State, has in the House of Delegates forty-two representatives less than the Western and Eastern divisions united.

Gentlemen must pardon me for saying, that on this subject, their arguments have gone beyond the proposition they have intended to support; and that in pourtraying what they deemed the incompatible interests of the East and of the West, they have gone far to establish another proposition, that the Ancient Dominion is no longer fitted for a single Government. I confess, indeed, Sir, that I was shocked and alarmed, when I heard the solemnity with which the gentleman from Chesterfield, in particular, declared the integrity of the State to be now only the second wish of his heart; and that unless the whole powers of legislation were thrown into the hands of a minority, he for one, was prepared for a division of the State.

[Mr. Leigh here rose to explain. He said the gentleman from Fairfax had strangely misconceived the character of his remarks. What he had said, was, that the preservation of the State entire, was the second consideration with him. The first was, that the entire State should have a free and regular Republican Government, founded upon the mutual interests of all, with a just balance of those interests, where they are conflicting.]

Mr. Fitzgugh resumed. I did not misunderstand the gentleman. I sincerely wish I had done so. He did not, it is true, desire the division of the State, if the Government should be organized on what he deemed fair principles; but when he came to explain himself in relation to these principles, they consisted in throwing the whole power of legislation into the hands of a minority of the people. Against the doctrine of disunion, I have uniformly protested, let it come from what quarter it might. I would preserve the integrity of the State at all hazards. (Mr. Upshur here nodded assent.) The gentleman from Northampton agrees with me. I rejoice at it. He is one of the earliest of my friends, whom I have had the pleasure to meet on the present occasion; and I thought, from my recollection of his character in former days, as well as from what I have seen of him here, I might rely on his zealous co-operation in whatever would have a tendency to promote the harmony of our deliberations, and to preserve the unity of the State.

But, Sir, to return to the subject from which I was called off by the gentleman from Chesterfield. If it be really so tyrannical to vest in a majority, a power to levy taxes to which they themselves are to contribute in proportion to their property, what shall we say to the converse of the proposition, where the minority are to be entrusted not only with the purse strings, but with the lives and liberties of those, in whom they are unwilling to recognize any general community of interest with themselves? If there be tyranny in the case, it is here, where the interests and wishes of a few are to be substituted for the interests and wishes of the whole.

To that argument which has been deduced from the peculiar character of the property most prevalent in the Eastern section of the State, I am willing to allow its full weight. Participating very largely in that description of property myself, I cannot be otherwise than alive to any dangers that may seem to threaten it. And be assured, Sir, that my own interest independently of a sense of justice, will at all times secure my zealous co-operation, in whatever may be necessary to protect it against dangers, either present or in prospective.

What then are the dangers to which it is really exposed? None, I apprehend, and none, in truth, to which reference has been made, but that of excessive taxation.

And even this is acknowledged to be very much diminished by the diffusion of the property in question over every portion of the State. Yes, Sir, slavery unfortunately exists even in the remotest regions of the West, and if its subjects be less numerous there, than along the shores of the Atlantic, their general distribution, in smaller numbers, especially in the Valley, ensures an interest in relation to them, that will not fail to unite with the more powerful interest in the East, in opposing any attempted injustice, in relation to them.

But I for one, am not disposed to rest on this as my only dependence. The very fact, that this description of property has hitherto borne so disproportionate a part of the public burdens, renders it a fit subject for constitutional protection. And it is with this view, that I have already proposed so to limit the power of taxation, as to distribute the impositions of Government among the different descriptions of property, exactly in proportion to their relative value. The effect of this must of course be, what all will acknowledge to be just, to reduce the tax on slaves to precisely the same level with all the other taxes of the State.

But I am told by the gentleman from Chesterfield, that this is a mere paper guarantee, to be executed or not, as the whim and caprice of the majority may hereafter determine.

A paper guarantee ! And what, Sir, are all the limitations on the powers of the Government, provided by the present Constitution ? What, that very organization of the Legislative Department you are so pertinaciously seeking to establish ? What, in fine, is the Constitution itself ? All, all mere paper guarantees ! And when these shall have become, in truth, as valueless as they are represented to be, the fact itself will furnish conclusive evidence of the progress of corruption, and of the unfitness of the State for the continuance of Republican Government. Until then, however, I must be permitted to hope, that the provision in question, if adopted, will furnish us ample security against the apprehended danger of excessive taxation.

Nor, Sir, does it seem to me more difficult to provide against another apprehended evil. I mean the unjust distribution of the public revenue with a view to internal improvement. The gentleman from Fauquier (Mr. Scott) has exhibited this danger in all its details. He has presented to us every variety of interest, Eastern and Western, Northern and Southern, upland and lowland, and has called on us of the middle country especially to look to our own immediate interests on this subject. Mr. Chairman, I cannot act in this spirit. I should deeply lament its introduction into this body. I am an advocate for the improvement of every portion of the State, and I am willing, for myself as well as my constituents, to contribute fairly and freely to its accomplishment. All that I require, is, that the public funds shall be judiciously distributed, and with a national and not a sectional spirit.

With this view, and especially to quiet any well founded fears of the East, I would consecrate in the Constitution, that wise provision on which our Fund for Internal Improvement so long reposed, and from which I, amongst others, was tempted, in "evil hour," to depart. Yes, Sir, the best security for a just and judicious application of the public treasure, is to dispose of it only in connection with individual contribution. Had this principle been sustained until now, we should have been gratified by the general diffusion of our system over every part of the State ; and instead of contemplating a Bankrupt Fund, buried in the waters of a single stream, we might have prepared ourselves to enter upon a new career of internal improvement, with unimpaired resources and unbroken spirit.

I beg leave to return, for a single moment, to the idea of the gentleman from Northampton, that the Legislative power of the Government should rest with a majority of interests rather than of persons. Does he really think that this ever was or ever can be accomplished in a Republican Government ? Does he believe that the interests of the majority, by which the Legislature is elected are ever predominant ? or that in any county the selection of representatives can be made by those who are to contribute most largely to the revenue of the State. I hold in my hand, Sir, a letter from the Commissioner of the revenue in my own county, giving this important information ; that of 1281 male titheables, paying upwards of \$3,500 taxes, 535 contribute only \$35. His examination has gone no farther ; but I have very little doubt that if prosecuted, it would have shewn that three-fourths of the taxes of the county are paid by less than 100 of its citizens. And does the gentleman think that to these 100 individuals, the entire control of the county could be given consistently with the general character of our Republican institutions ? To attempt it, in reference to the State, would be not less impolitic, and infinitely more unjust.

To any proposition, then, Mr. Chairman, going to confide to a minority of the legitimate voters of the State, the entire control of *both* branches of the Legislature, I cannot, under any circumstances, give my assent. Hardly less objectionable, is the proposition of the gentleman from Culpeper, now under consideration, to give such control, over the most popular branch. Even this goes very far beyond what gentlemen profess to ask, the protection of property, and in all cases of the joint action of

the two Houses, whether referring to persons or property, elevates the minority above the majority. The former and not the latter are to elect your Senators, your Governors and your Judges; and to proclaim, from time to time, the relation in which you stand to the General Government. Sir, I cannot assent to this. To the will of the community, fairly and legitimately expressed, I shall at all times bow with perfect submission. But I cannot recognize as the deliberate sentiment of the whole, the will of a minority, congregated in a particular section of the State, and expressing the peculiar feelings and wishes of those, whom they more immediately represent.

Gentlemen are mistaken in the precedents on which they rely. There is not one of them that goes to sustain the proposition contended for here, that the whole power of legislation ought to be confided to a minority. The case of the United States is hardly applicable at all. That Government was a compact amongst independent sovereignties, and regulated in almost all its Departments, on a principle of compromise. If Virginia obtained in one branch of the National Legislature, a representation beyond her white population, she fully paid for it in the other, by admitting the little States of Rhode Island, Delaware, &c. to an equal participation of power with herself. Nor does any State that I know of, furnish an example of organization in *both Houses*, with a view to the representation of property. In the States of New Hampshire, Massachusetts, South Carolina, Georgia, and perhaps one or two others, property, it is true, is avowedly provided with a check in *one House*; but in a large majority of the States, both old and new, so far as Legislative representation has been controlled by any thing beyond mere convenience, it has been fixed solely in reference to white population.

Whether we ought to depart at all, from this latter principle, must depend on contingencies that cannot yet be calculated. If the legitimate claims of property to protection be not sufficiently regarded in the other provisions of the Constitution, it becomes a question of expediency, how far they ought to be secured by a check on the power of the majority, in the less numerous branch of the Legislature; and this, like all other questions of expediency, must be decided, in some degree, by its probable effect on the object we ought all to have in view, the adoption of a Constitution that will be acceptable to a majority of the people.

I lamented, Sir, that I could not follow the gentleman from Accomack, (Mr. Joynes) through the statistical details with which he yesterday favoured the Committee. The late period at which he rose, rendered me utterly incapable of giving to his statements, the attention they no doubt deserved. I heard enough, however, to satisfy me, that while he had done less than justice to that portion of the Western country denominated the Valley, in charging it with paying into the public Treasury, less than it received from it, he had measured out rather more than justice to his own section of the State, by exhibiting it in connection with the fertile and heavily taxed country immediately under the mountain. I learn, indeed, from the gentleman from Albemarle, that if the cities of Norfolk and Richmond be excluded from the Eastern division of the State, it is very doubtful, whether it may not be found in the very predicament prescribed by the gentleman from Accomack, to the whole Western country.

I cannot concur with these gentlemen, Sir, who would resolve all our actions into base and sordid interest; though it were useless to complain of the remarks of the gentleman from Chesterfield, in relation to the district I represent; as in denying to us, any other motive of action, than our own peculiar interest, he has only placed us by the side of himself. But I do trust, Sir, that in spite of the growing corruption of the times, he has so eloquently and so justly described, there is yet in this body at least, enough of public spirit, to induce us to look to the great interest of the Commonwealth, uninfluenced by either personal or sectional considerations. If there be not, the sooner we adjourn the better. Let us go back to our constituents, and tell them honestly and candidly, that we are not the men they had supposed us, and that we are in truth, as unfit to give, as they to receive a Republican Government.

I have submitted these remarks for no other purpose, Mr. Chairman, than to explain both here and elsewhere, the course I am about to pursue. It would be folly in me to hope, that the Government about to be formed, will be based exclusively on the principle I have advocated; and I should hold myself unfit for the station with which I have been honoured, if I did not feel myself at all times prepared to make every reasonable concession, to insure either harmony here or tranquillity abroad.

The Chair having twice enquired, whether the Committee were ready for the question, it was about to be put, when,

Mr. TAYLOR of Norfolk, rose, and said that he had not had the slightest suspicion that the question would be taken at this time; but as it seemed that no gentleman intended to address the Committee, he would move that the Committee do now rise, and he owed it to himself to explain why he made such a motion.

I received, said Mr. T. the honor of a seat here, with a distinct knowledge, on the part of my constituents, of the sentiments I held in regard to the reforms contemplated in the Government of the State. I had given to them no *pledges*, express or

implied. I had made a distinct avowal of my opinions in respect to most of the matters in controversy, and an open promulgation of them, on the last day of the election. On the immediate subject now before us, I had formed no definite opinion: nor had any such opinion been formed, or expressed, by the people of my district. If there had, I was ignorant of it.

The opinions I hold with regard to this resolution, have already been indicated to this body, by the resolutions I had the honor to submit to it, some days since: which resolutions were considered in part, and now sleep on your table. When I offered them, I did believe, and I do still believe, that the amendment is inconsistent with our free institutions, that it is hostile in its principle, to equal rights among qualified voters, and tends directly, in its practical effect to introduce an oligarchy, fatal to the continuance of free Government. If the present amendment had been rejected, it was my purpose to have moved another, the object of which would have been to strike out the words "*white population*," and to insert in lieu thereof "*qualified voters, without regard to disparity of fortune*;" and I meant to do this, not only because I considered it more philosophical to commence with presenting principles, rather than facts; but also, because I considered it important not only to myself, but to the friends who agree with me in opinion, and to the interests of the whole State, that the public should understand the subjects which are in discussion here, that they should understand, that this Convention is debating whether a majority of the qualified voters of the State, shall have the control of the State, or whether a minority shall possess that control on account of their superior wealth. I am willing to stand or fall on this question, when it shall be rightly understood by the people.

I do not now intend to enter into the debate. Peculiar circumstances render it improper for me to do so at present, and it is in reference to these circumstances that I am induced to ask the Committee to rise.

I have learned, recently, that although no opinion had existed among my constituents when I came here, on the subject of the amendment, there *does* now exist among them a very decided opinion on that subject, insomuch that I have received direct instructions as to the course they wish me to pursue. I have some reason to believe that a vast majority of my people (I call them so, as they have honored me with an appointment to this body,) concur in the sentiment expressed in these instructions. It has been the sentiment of my life, that representation is only the means by which the opinions of the constituent body are to be expressed and effectuated. No act of mine shall ever impair that principle. But, Sir, there are limits to obedience. Had my constituents instructed me in some matter of expediency, or asked me to do what was possible to me, I should have taken pleasure in showing with what cheerful submission I would give effect to their opinions rather than my own. But they ask what is impossible. To obey them I must violate my conscience, and the sacred obligation I owe to my country. I must do that which would dishonor me as a man and cover me with shame as a patriot. I cannot do it without being guilty of moral treason to the free institutions of my country. If I fall, I will meet the blow with dignity and firmness, and I shall only regret that the victim is not more worthy of the God. But, Sir, a man of integrity knows how to reconcile all his duties: and I am constrained to ask a postponement of this question, because it is my fixed purpose not to give a vote upon it, but to *resign my seat in this body*. I have had a communication with the member first chosen in the delegation from Norfolk, and I have asked him to consult with his colleagues as to the selection of some other person who may be more fortunate than I am, and agree in sentiment with my constituents, and to do so with as much expedition as propriety will allow, in order that they may not remain unrepresented on this question. He informed me that there was no need of acting yesterday, as there was no probability whatever that the question would be taken for some days to come. Under these circumstances, I throw myself on the generosity of this body, that I may not be compelled to act against either my own conscience or the will of my constituents, and that time may be given for the selection of another delegate in my room. I shall, therefore, move that the Committee rise, hoping that before it is again called to deliberate, some gentleman may occupy my seat, who shall be more fortunate than myself, in harmony of opinion, though none can be more devoted to what I conceive to be the best interests of my constituents.

Before I take my seat, I hope it will not be deemed criminal in me, to profess that I brought to this House the sentiments so well expressed by the gentleman from Northampton. (Mr. Upshur.) I came here, Sir, as a Virginian; prepared to promote the interest of Virginia: fully believing that the petty and temporary interests of my district are as nothing, in comparison to the interest it has, in the general prosperity of the State.

Permit me, Sir, to state the comparative effect which will be produced in my District, by the adoption of the resolution and of the amendment; in other words, by the white, and by the compound basis of representation. My District consists of the counties of Norfolk, Princess Anne, Nansemond, and the Borough of Norfolk. In

the county of Norfolk, (I state from memory,) the white population is about 9,000: In Princess Anne, 5,400; in Nansemond, more than 5,000; and in Norfolk Borough, 4,600. Now, if the resolution reported by the Committee shall prevail, and the *white* basis be adopted, what will be the result? Go by numbers, and the county of Norfolk having twice the population of the Borough, will be entitled to twice the number of representatives. Princess Anne will have its representation in proportion to that of Norfolk 1 and 16—100 to 1. Nansemond also will have a larger representation than Norfolk Borough. I speak now of qualified voters; and I refer to the Census, only as a mean of ascertaining them. But, should the amendment prevail, and the *mixed* basis of population and taxation be adopted, see what will be the result: \$10,250 are paid in taxes by Norfolk Borough. Add its population, and the compound ratio for that Borough, will be within a fraction of 15,000. In the county of Norfolk, the taxes amount to \$5,528: Add the 9,000 people, and the sum is less than 15,000. So that the whole county, with a double population, will have a less representation than the Borough. The county of Princess Anne, which pays \$2,716 in taxes, will, on the same plan, be surpassed by the Borough of Norfolk, in the proportion of 1 and 17—100 to 1. And, in like manner, the county of Nansemond will be surpassed, in the proportion of 1 and 94—100 to 1. Thus, with greater population, each of these counties will have less representation than the Norfolk Borough.

Mr. Taylor concluded, by renewing his request, that the question might be postponed, and that the Committee would rise. He did not feel at liberty to enter upon its discussion; but he afterwards consented to withdraw the motion at the request of

Mr. MOORE of Rockbridge, who then took the floor in support of the resolution, and spoke as follows:

Mr. Chairman: It was my intention, until very recently, not to have troubled the Committee with any remarks upon the proposition now under consideration. I had supposed, that long before we assembled in this Hall, the opinion of every member of this Convention, would have been unchangeably fixed, upon this question at least, if upon no other; and that consequently, every argument which might be adduced on either side, would be entirely thrown away. I find, however, from the great zeal which has been manifested by gentlemen who have advocated the opposite side of the question from that which I intend to espouse, that they do not altogether despair of making converts to their cause.

Confident, as I am, that in asking that the representation in the House of Delegates, shall be based upon white population exclusively, I am asking nothing more than that which is right in itself; and unwilling that it should be supposed for a moment, that I, or those whom I represent in this Convention, are demanding anything more than justice at your hands, I beg leave now to present to the Committee, my views upon this highly important subject. I claim, Sir, for myself, and for my constituents, to be actuated by higher considerations, and more honorable motives, than those of mere sordid interest, in the course we are pursuing in relation to this matter. And I call upon those gentlemen who pay so poor a compliment to themselves and to their fellow-men, as to assert that interest is the great, if not the sole motive of human action, to turn their attention to the Senatorial District from which I come, and to inquire, what is the relative proportion of white and black population there, to what it is in other parts of the State; and what has been the relative increase of the whites and the blacks; to ascertain what is the nature of our soil and products; what is the extent of our property of every description; and if they please, what taxes we pay, in proportion to other portions of this Commonwealth; and then to say, whether or not, we can reasonably expect, to gain any permanent advantage from the adoption of the basis for which I contend, in preference to that which they propose. The gentleman from Accomack, it is true, has endeavoured to shew, that the people of the Valley have very little interest in common with the people on this side of the Blue Ridge of mountains; and has made a calculation, by which he endeavours to prove, that the former will always find it to their interest, to impose taxes upon slaves, in preference to lands. He assumes, that in all the counties in which the slaves do not bear a proportion of 38 per cent. to the whole population, the people will find it to their interest, to throw as much as possible of the burthens of taxation, on that species of property. Perhaps, if the gentleman could have shewn, that the proportion of voters in the Valley counties who hold slaves, to those who hold none, was less than 38 per cent. there might have been some force in the argument which he advanced. But the proportion of persons in those counties entitled to vote, who hold slaves, to those who hold none, being something like two to one, it is apparent from his own reasoning, and upon his own principles, that they cannot be interested in taxing slaves, in preference to other property. And that a majority of those at least, who have the power in their hands, have a common interest with the Eastern people, in protecting slave property from unjust taxation.

It is said, Sir, that all comparisons are odious; and I confess, that none are more so to me, than those which have been made in this Committee, upon the subject of taxa-

tion. Not because the result of these comparisons will be to the disadvantage of my own particular District, (for I think I can demonstrate to the satisfaction of the Committee, that we pay a full proportion of all the taxes paid in the State :) but because they are calculated to engender the most unkind feelings, between the good people of this Commonwealth. I did not like the manner in which the gentleman from Accomack was pleased to divide the State, by the Blue Ridge, and then endeavoured to prove, by shewing that we (the Western people) drew more money out, than we paid into the Treasury, that we were all a set of paupers, dependent on the charity of the East. I do not choose, that we, who pay our full proportion of the taxes, shall be classed with those who pay less than their proportion, in order to make us all out paupers. According to this mode of proceeding, I can prove *his own constituents* to be nothing but a set of paupers; for if he will add *his* District, to the whole country West of the Blue Ridge, he will find, that all taken together, we do not pay as much into the Treasury as we draw out of it. And after all, there is nothing so very discreditable in a county or district of country, paying less money into the Treasury than it draws out of it; for if you divide the State into two parts, containing equal numbers of people, by any line you please to run, unless they draw out of the Treasury in exact proportion to what they pay into it, one division or the other, will draw out more money than it puts into it; and according to the gentleman's mode of reasoning, all the people of that division must be considered as dependent upon the charity of those of the other division. I had always supposed that the people of every portion of this Commonwealth, contributed to the support of Government, both in personal services, and in money, in proportion to their ability to contribute, and that this was all that could reasonably be demanded of them. I am not willing to give to those who pay more money than we do, a greater representation than we have; nor will I ask of those who pay less, to be satisfied with a smaller one. I have ever believed, that when a man, however poor he may be, has paid as much money into the Treasury as he is able to pay, that nothing more can be required at his hands; and that his having done so, ought, like the widow's mite, to entitle him, to equal privileges, with those, who are enabled, out of the abundance of their wealth, to pay a much larger sum.

Permit me now, Sir, to call the attention of the Committee once more, to the declarations contained in our Bill of Rights, about which there appears to be so great a diversity of opinions. It is not my intention to follow those who have preceded me in this debate, over all the ground which they have occupied in discussing the principles asserted by these declarations; my only purpose will be, to explain to the Committee, what has been my understanding of these declarations, so solemnly made by our ancestors. I have been in the constant habit, from my earliest infancy to the present moment, of regarding the whole Bill of Rights as a sacred instrument, in which the only true principles upon which Republican Governments can be founded, had been proclaimed to the world. And I trust, Sir, I shall be pardoned, (for I assure you I mean no offence to any man.) when I say, that although I did believe that individuals might be found in foreign countries, who (misled by the prejudices of education, or blinded by interest,) might be disposed to question their authenticity; yet I did not believe, that in this boasted land of liberal principles, one man could be found, who would refuse to acknowledge them as the foundation, upon which the whole superstructure of Government should rest. Entertaining such sentiments as these, it has been, as you may well imagine, Mr. Chairman, with extreme pain, that I have listened to the very able and ingenious arguments of gentlemen, which to my apprehension, are but too well calculated to sap the very foundations of this, and every other Republican Government.

The first section of the Bill of Rights asserts, "that all men are by nature equally free and independent," &c. Now, Sir, is there any man here who doubts that all men are "by nature equally free and independent?" I presume there is not one individual in all this Assembly, who is prepared to express a doubt upon the subject. But, say gentlemen, our ancestors did not mean to assert that all men are in the actual enjoyment of equal rights and privileges; they only meant that by nature, they are entitled to equal rights and privileges; and in this opinion I entirely concur with them. But when gentlemen undertake to pronounce this to be a mere abstract principle, which can never be applied to the actual condition of men, I differ with them *toto calo*. And I hesitate not to affirm, that it is a principle which not only *can be*, but which *must* be acted upon by all men, whatever their condition in life may have been; whether they have been in the enjoyment of their natural rights, or held in the most degraded state of slavery, whenever they are about to form a Constitution; otherwise, the Government which they establish, must in the very nature of things, be nothing more or less than a despotism. We have been asked, if this be really a correct principle, and susceptible of universal application, why was it that the slaves were excluded by our ancestors, and why do we not now propose to admit them as parties to the social compact? The answer to this question is so easily given, and is

so obvious, that I am surprised it should ever have been asked. The answer is, that we do not *choose* to form or enter into any such compact with them. And is not this a sufficient answer?

We exclude *them*, for precisely the same reasons that we would exclude foreigners of every description; for the same reasons that we would refuse to extend the right of citizenship to the inhabitants of Texas, or of Canada, or to any race of Indians who might wish to be acknowledged as a part of the community to which we belong: namely, that we do not *choose* to grant their request. And we would not choose to grant such a request, because we believe that they would not make good citizens. We do not propose to admit our slaves as parties to the social compact, because we believe that they would not make good citizens, or because we are prejudiced against their colour; or if you please, because we think proper to disregard their natural rights, and to hold them in slavery, that we may reap the benefit of their labour. And it is perfectly immaterial what the reason for excluding them may be, if it be sufficient to induce us to do so. By excluding foreigners, however, or Indians, we do not interfere with their natural rights; but leave them at liberty to form any sort of Government they please for themselves. The mistake is in supposing that the principle, if true, is one which must, in its application, be extended, to all, to whom, it can be extended: whereas, it is one, which may, or may not, be extended, so as to embrace any particular race or class of people, as may seem best to those who are about to establish a Government: but which must be extended to all whom it is intended, shall become parties to the compact, or members of the community. It is evident, that such was the understanding which our ancestors had of this principle, and of its application, at the time when our Bill of Rights and Constitution were established by them. They, excluded foreigners from the enjoyment of all the rights and privileges of citizenship in this State, except upon certain conditions: they excluded the Indians altogether, and they excluded the negroes altogether, and the reasons for excluding the latter, were stronger than those for excluding the former. All those, however, who were admitted as members of the community, were admitted upon terms of perfect equality. Let us suppose the agents of the British Government, with a view to induce them to return to their allegiance to the British Crown, to have addressed them in language like this: "You have declared, that all men are by nature equally free and independent, and that the majority of the people have an indubitable and unalienable right, to alter, reform, or abolish Government at their pleasure; and we have a strong party amongst the white people in this State, who are in favour of abolishing the Government which you have established, which added to the whole number of Indians and negroes in the State, (who are also in our favour,) will make a majority; which, according to your own principles, has a right to change the Government at its pleasure. We therefore demand that you submit to the will of this majority, and give up the power which you are no longer entitled to hold." What are we to suppose would have been their reply to such a demand? Would they not have said, "these Indians and negroes constitute no part of the community for whose advantage this Government was formed, and consequently have no right to express any opinion upon the subject; and although we admit that their natural rights are equal to our own, yet they not having been permitted to become parties to the compact from which we derive our authority, they can have no voice in changing or destroying it." And they might well have added, "these negroes whom you see so totally unfitted by their habits, and want of all the moral virtues, to enjoy the blessings of liberty and of a free Government, have no just cause of complaint against any one for placing them in their present degraded condition, except it is against your own King, who sent them amongst us, and compelled us to receive them, contrary to our own inclinations, which is one of the grievances complained of in the preamble to our Constitution."

Having expressed my belief that our slaves are by nature equally as free and independent as ourselves, or in other words, that they are by nature, entitled to equal rights and privileges, it may not be improper, that I should make one or two remarks, which though they have no immediate bearing upon the question before us, may serve to prevent any misapprehension of my sentiments upon a subject of such vital importance to this State as that of slavery. I give it then, as my deliberate opinion, that although our slaves are by nature, entitled to equal rights with the rest of the human race, and although it would be both our interest and our duty to send them out from amongst us, if any practicable scheme could be suggested for effecting that object; that yet, all questions as to their rights, are questions between them and our selves exclusively. It is moreover my opinion, that if the necessity of the case does not furnish a sufficient excuse for our retaining them in servitude, (as I hope it does,) that we are answerable for our injustice towards them, only to our own consciences, and to the Great God of all: and that no foreign people or power, have a right in any manner, under any circumstances, or under any pretence, to interfere between them and us. And so far do I carry my ideas of exclusive right, upon this subject,

that if the majority of the people of Virginia, or of their representatives, were to determine to reduce all the free negroes amongst us to a state of slavery, although the proposition in itself would be most abhorrent to my feelings; yet I should regard myself as a traitor to my country, if I did not resist by all the means in my power, any attempt which might be made, on the part of any other people, to interfere.

We have been asked, why it is we exclude the women from all participation in the formation of Government, if it be true that all the human race possess equal natural rights? I answer, that it is not because we deny to these an equality of natural rights, or because they are inferior in intelligence, morality, or virtue, to ourselves: for I will be as ready to admit as any gentleman on the opposite side of the question, that in all these particulars they are our equals at least, and in most of them, our superiors. And I was not a little surprised the other day that the gentleman from Orange, should have thought it necessary to go into a historical argument, to prove what no one here was disposed to dispute in relation to their capacity for conducting the affairs of Government.

It will be a sufficient answer to this question, to say, that the women have never claimed the right to participate in the formation of the Government, and that until they do, there can be no necessity for our discussing or deciding upon it: more especially as no one believes that any such claim will ever be insisted upon by them. There surely can be no reason why we should attempt to impose upon them, burthens which they are unwilling to bear. If I were to attempt to assign the reason why they do not make any such demand, I would say that it is because their interests are so completely identified with our own, that it is impossible that we can make any regulation injuriously affecting their rights, which will not equally injure ourselves. And because they have such unlimited confidence in our sex, that they cannot suspect us of any disposition to act unjustly towards them. A confidence which I hope is by no means misplaced, unless gentlemen on the other side of this question, are disposed to impose some unjust restrictions upon them, of which I am sure I am very far from suspecting any member of this body.

We have been called upon to assign a reason why infants under the age of twenty-one years, should be excluded from a share in the formation of the Government, if the principles for which I have been contending are correct? I answer, that it will be time enough to assign the reasons for it, when they claim the right; and as it is very certain they do not intend to make the demand at present, we need not waste our time in making unprofitable enquiries, into the extent or nature of their rights. The question asked by the gentleman from Orange, (Mr. Barbour) as to our right to exclude the free negroes from the rights of citizenship, is sufficiently answered by saying, that we choose to exclude them for reasons which must be obvious to him, and therefore need not be assigned.

There has been one other question asked, which deserves our most serious consideration. It is this: What right have we, if the principles asserted by the Bill of Rights are correct, to exclude paupers from taking any part in the formation or amendment of the Constitution? It is important in the consideration of this question, to know precisely what is meant by the term paupers. If this term is intended to embrace all the non-freeholders, as I presume it is, (for it is on account of their poverty, and the want of common interest with and attachment to the community, which is supposed to be consequent upon their state of poverty, that they are excluded,) there can be no difficulty in making a suitable reply to the question. The reply which I am disposed to make, is this: These paupers or non-freeholders, being admitted to belong to the community, and acknowledged as parties to the compact of Government, and they having demanded permission to exercise their rights, as they have done, in language not to be misunderstood, or disregarded; we have no right to exclude them from a share in the alteration of the old or the formation of a new Constitution. And, Sir, if I am not deceived by the language of their memorials now upon your table, they are determined not to be prevented from exercising their rights. When we come to consider the question, of who shall be permitted to vote in favor of the adoption or rejection of the new or amended Constitution, I may perhaps endeavor to satisfy the Committee, that every free white man above the age of twenty-one years, will be entitled to vote upon that question, inasmuch, as the people will then be engaged, in the actual exercise of those equal rights, secured to them by our Bill of Rights: And to draw the distinction between these natural rights, and the right of suffrage, which is a mere conventional right, and can only be claimed or exercised, by those on whom it has been conferred by the majority which created the Constitution. For the present, it is enough for me to deny our right to exclude them from voting, for or against the new Constitution.

The second section of the Bill of Rights asserts: That all power is vested in, and consequently derived from, the people, &c. To this proposition I understand no objection has been made. I shall therefore pass on to the third section, which asserts: That Government is, or ought to be, &c. (here the third section of the Bill of Rights was

read.) And it has been in discussing this proposition, that most of the questions I have endeavored to answer, have been propounded: but which I have thought had more immediate relation to the first principle asserted by the Bill of Rights.

A question has been raised, whether the right of the majority to govern which is here asserted, is a natural or conventional right; and we have been called upon to prove that it is a natural right. For my own part, I conceive it to be wholly immaterial, as to the effect it is to have upon the decision of the question now before us, whether it is considered as a natural, or as a conventional right. If it be not a natural right, its existence must at least be acknowledged, before the social compact can be formed. For unquestionably, it is essential for any body of men, who may be about to form a Constitution, to determine in the first place how the questions which may arise shall be determined. It would perhaps be impossible for me to furnish a better illustration of my views upon this subject, than that which is afforded by a reference to the course which has been pursued by the Convention itself. When we assembled in this Hall as the representatives of the people, we met upon terms of perfect equality, notwithstanding the great inequality which must exist among so many individuals, both as to intellectual qualifications, and to physical power. A motion was made to appoint a President, and the venerable gentleman from Loudoun was put in nomination by the venerable gentleman from Orange. It being understood that a majority of the members were in favor of the election of the gentleman from Loudoun, he took his seat as President. And if another person had been put in nomination, and had received less than the majority, and the member from Loudoun had obtained but a majority of one vote, still he would have been entitled to take his seat as President: and any man who would have questioned his right to do so, would have been regarded as little better than a madman.

We proceeded in the next place to elect a Clerk, a Sergeant at Arms, and two Door Keepers, and in every case we continued to ballot, over and over again, until it was ascertained who had the majority. Thus was the right of the majority to rule, acknowledged time after time by this Convention, without a single dissenting voice: and all this took place before we had become organized as a Convention.

So soon as we were organized, we again acknowledged the right of the majority to rule, by every vote which we gave upon the adoption of the rules by which our deliberations are regulated. And the only binding authority which those rules have over us at this moment, is derived from the sanction given to them by the vote of the majority. Is it then for us to question the right of the majority to rule, after having so often acknowledged it, in a case exactly in point? Surely it is not. It would be idle after this, to go into the enquiry, as to the origin of the right of the majority to rule. Nor need I go into the enquiries suggested by the gentleman from Northampton, as to the mode in which the majority is to be ascertained, how the votes are to be given, or who would appoint the tellers. If the majority be ascertained, it is immaterial how it is ascertained; and I presume it would be impossible to form any Government in a country where parties were so equally balanced as to require a count in order to ascertain the majority. I do not imagine that our ancestors, when they dissolved the old Government, and established the existing Constitution, waited to take the votes, or appointed tellers for that purpose, before they began to exercise the powers incident to Government. It was sufficient for them to know that they were the majority.

It is not correct to suppose, as has been done by some of those who have preceded me in this debate, that the acknowledgment of an unqualified right in the majority to govern, is incompatible with the existence of any rights in the minority. The minority still retain their natural rights unimpaired by the establishment of Government; but it being impossible that two separate social compacts can be formed, or rather, that two independent communities, can exist in the same country at the same time, the minority being the weakest party, must either submit to the will of the majority, or leave the country. Thus we see the Cherokee and Creek tribes of Indians compelled to leave the Southern States, and the Royalists flying from Mexico at this very time, and seeking an abode in countries where they may enjoy all their rights unimpaired.

The gentleman from Northampton, speaking of the right of the majority to govern, says: "The very advocates of this doctrine abandon it, because they cannot but perceive, that it is impossible in practical Government, to push it to its fair results;" and asks "if free whites alone are to give the measure of political power, upon what principle is it, that any one individual is deprived of his share in that power?" The gentleman will pardon me for saying that he has done the advocates of this principle, great injustice, and that he and all the other gentlemen who have followed him upon the same side of the question, have fallen into a very great error, by attempting to apply the principle or rule improperly. The rule is applicable when a Government is to be formed, but can with no propriety be thought to be applied to mere convention-

al regulations, which owe their existence to the will of the majority as expressed in the Constitution.

If it is provided by the Constitution, that none but persons possessing the freehold qualification, shall be entitled to the right of suffrage, or that a plurality of votes only shall be required to elect members to the General Assembly; or if the Legislature, in pursuance of authority derived from the Constitution, declare that there must be unanimity in jury trials. &c: all these things are right and proper, because the majority have willed that it shall be so. And if the majority think proper at any time, they have full power to vary these regulations and to adopt others in their stead: there can be nothing discovered then, inconsistent with the unlimited right of the majority to rule, in any of these mere conventional regulations which have been so often, and so triumphantly referred to during this debate.

The gentleman from Northampton attempts to avoid the force and effect of this principle, as applicable to the question before us, by asserting that "there are in fact no original fundamental principles of Government; that the principles of Government do not apply to another; and that the same principles will not apply in the same country at different times and under different circumstances." He also asserted, that "this principle (that the majority shall govern) does not prevail in England or in Turkey, and that yet there are Governments in both these countries." I beg leave to differ with the gentleman in every one of the positions he has taken. I affirm, that there are original fundamental principles of Government, which must and do prevail in all countries, at all times, and under all circumstances. And that this very principle of the right of the majority to govern has prevailed at all times, both in England and in Turkey. Every change which has been effected in the British Government, from the days of King Alfred to the present moment, has been made with the consent of the majority, without which it could not have been effected at all. In France, this principle has been applied in the last half century, to change the Government from an absolute Monarchy to a limited Monarchy; from a limited Monarchy to a Republic; from a Republic to a Despotism; and from a Despotism back again to a limited Monarchy. And all the dreadful convulsions of that country, grew out of an attempt of the minority to resist the will of the majority. The power of the majority over the Government is unlimited, and they may, at any time, convert the Government from a Monarchy into a Republic, or from a Republic into a Monarchy, at their pleasure. In fine, the majority have "an indubitable, unalienable, and indefeasible right to reform, alter, or abolish" the existing form of Government at their pleasure.

We have been informed by the gentleman last alluded to, that there are two sorts of majorities, viz: a majority of numbers and a majority of interests. I confess, Sir, I do not exactly understand what is meant by a majority of interests, any more than I should have been able to comprehend his meaning, if he had talked to me about a majority of air, or of religion, or any thing else, in speaking of which he could not, with any propriety, use the term majority. I understand by the word majority, as used in the Bill of Rights, precisely what nine hundred and ninety-nine men out of a thousand throughout the United States understand by it, that is, a majority of numbers. And if the gentleman had consulted his own constituents upon the subject, he would have found that the whole of them understand it as I do.

In order to sustain this doctrine of a majority of interests, the gentleman advanced a proposition, which I shall endeavor to shew is utterly incorrect, that is, that property is one of the elements of society. For the purpose of ascertaining the truth of this proposition, we must look back to the original rights of men in a state of nature. Each man had a right to that which was in his immediate possession, and to nothing more, and the moment he abandoned that possession, any other individual could acquire a perfect title to it, by seizing and appropriating it to his own use. And the title which man acquires in a state of society to property, owes its existence and its validity, entirely to the consent, expressed or implied, of the other members of the society to which he belongs. For example, when the Legislature, acting under authority derived from the majority, have said that the possession of a deed executed with certain formalities, shall entitle a man to hold real estate, or that the possession of a bond, shall give the holder a right to claim property in the hands of another: the validity of these claims depends entirely upon Legislative enactment, and have no foundation whatever in nature. And I hesitate not to affirm, that whenever individuals possessing property have entered into, or become members of any social compact, that they must have derived their title to that property from the consent of some other society in which they had lived. Property then is not an element of society, it is only one of the strongest *inducements* which men have, for entering into the social compact. It was said by the learned gentleman from Northampton that we have no knowledge of any people since the period when Bible history commenced, who went into a state of society without any property. I do not pretend to be so accurately acquainted with Bible history as that gentleman, but I am inclined to think, the Israelites themselves, must have had very little property to begin with, after passing through the wilderness;

and I could name several other nations, who, in the commencement, must have been as destitute of property as we can conceive of men being.

Not being entirely satisfied with this new doctrine of a majority of interests, the gentleman from Northampton, in the next place endeavored to shew that there was a large majority of numbers on this side of the Blue Ridge, if we take the slaves into the estimate. I have already endeavored to prove that the slaves, not being a part of the community, or belonging to the body politic, cannot be counted at all. But if they are to be counted on either side, (which God forbid) what title has he, to count them on his side? Is it because their interests and his are the same? Surely not; for every interest they have on earth is adverse to his, and if counted at all, they must be counted against him.

But, Sir, there is another very numerous and respectable class of men in this country, whose claims have as yet been but little noticed in this body, but who have a right to be taken into the estimate; who, as I have already stated are determined boldly to assert their rights; and who must be counted upon one side or the other. I allude, Sir, to the non-freeholders. And if it be true, as has been so often and so forcibly remarked, by gentlemen on the other side of this question, that interest is the main spring of human action, I would ask what interest *they* have, in common with the slave-holders?

Does the gentleman expect them to unite with him, because they find the advocates of their rights among those who are in favor of the mixed basis? If this were the fact, such an expectation, would not be altogether unreasonable. But unless these non-freeholders, be both blind and deaf, they cannot be ignorant of the fact, that in all the struggles which have taken place in the Legislature, upon the Convention question, it has been by the advocates of the white basis of representation alone, that their claims have been attended to, and supported against the most violent opposition on the part of those who are now in favor of the mixed basis. Nor can they forget by whom they have been excluded from being represented in this very Convention. The whole body of non-freeholders on this side of the mountain then, together with all other non-slave-holders, must be added to the whole population on the west, and a large proportion of the freeholders immediately on this side of the Blue Ridge and counted against him: and then let us see, what sort of a minority we have, attempting to dictate terms to the majority.

I have thus, Mr. Chairman, endeavored to express to the Committee what has been my understanding of some of the declarations contained in the Bill of Rights: to prove that the assertion contained in the third section, that is, "that the majority have an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it" (the Government) is true; and that there is a large majority of the community, who must be fairly presumed to be in favor of making the white population the basis of representation, in the General Assembly.

I shall proceed in the next place, to consider the amendment which has been proposed by the gentleman from Culpeper, (Mr. Green) to the resolution reported by the Legislative Committee. His proposition is, that representation in the House of Delegates, shall be based upon a combined ratio of white population, and of taxation. The first remark which I shall make upon this proposition, is, that I cannot perceive how it will be possible, if the amendment shall prevail, ever to apply the rule which it is intended to establish. Do gentlemen mean to make the taxes now paid the permanent basis of representation? If they do, they will find, that in a very short time, owing to the constant fluctuation in property, and the consequent change in the relative proportion of taxes paid, in different sections of the State, that the representation will soon cease to be just, even upon their own principles. I cannot suppose that gentlemen intend to make the law now in force, imposing taxes for the support of Government, a part of the Constitution; for, if they do, they might as well dispense with the Legislative body altogether; the most important part of its duty being to regulate the taxes according to the ability of the people to pay, and the necessities of the Government. If the amendment prevails, I do not see how the Legislature are to be prevented from imposing the taxes in such a way, as to give to one portion of the community, the whole amount of power or representation, which it is proposed to derive from the payment of taxes. For example, if the slave-holders, having the majority in the Legislature, choose to take to themselves the whole representation arising from taxation; all they have to do, will be to collect the whole revenue of the Commonwealth from a tax upon slaves. But granting that the rule, if adopted, can be applied, which I think more than doubtful, let us examine the principle which it establishes, and the justice of applying it.

The principle is, that every portion of the community shall be represented in proportion to the taxes it pays into the treasury. And those who avow this principle, attempt to sustain it by saying, that taxation and representation must always go together; and by comparing the social compact to a partnership between merchants, or a Bank association, in which every member is entitled to power, in proportion to the

capital or stock he furnishes. In order to test the correctness of this principle, let us see how it will work, when applied to individuals; and this is the only way in which principles of this sort can be properly tested; for it is always true, that a principle, which cannot be justly enforced between individuals belonging to the same community, can never be justly enforced against the inhabitants of a particular district, who constitute a part of that community. If this be a correct principle, then the man who owns, or pays taxes on two slaves, is entitled to twice as much power as he who owns, or pays taxes on but one; and he who owns or pays taxes on a thousand slaves, will be entitled to five hundred times as much power, as he who owns but two, and one thousand times as much as he who owns but one; and he who owns no slave, or pays no taxes, will be entitled to no power at all. Suppose a proposition was made at this time to act upon this principle, and give to every man power at the elections (that is to say, a number of votes,) corresponding to the amount of taxes which he pays, is there any man here who would have the hardihood to vote for it? Surely there is not one. And if such a provision were engrafted in the Constitution, do you believe that the people would submit to it? Do you believe that the non-slave-holders would agree to be deprived of all share in the elections; or that those who own but from one to twenty, would agree to see the elections entirely controuled by a few, who own from one hundred to a thousand? It is impossible any man can believe such a system could be enforced. And yet, Sir, we are gravely called upon to enforce this principle against the people west of the Alleghany, which we *dare* not even propose to establish amongst ourselves. I say amongst *ourselves*, Sir, because I affirm it as my belief, that the people of my district have as much, or nearly as much interest in this question, as the great body of the people on the eastern side of the Blue Ridge. And I shall endeavor, before I take my seat, to prove that we are much more strongly connected with the people of this part of the State, by motives of interest, than the people of either the Accomack or the Culpeper districts, from whose representatives we have heard so much on the subject of imaginary separate interests.

The true rule as to taxation, (and it is one which prevails every where,) is, that every man shall pay in proportion to his ability to pay, without any sort of regard being had to the political rights which he enjoys. This is the rule which has constantly been acted upon by the Legislature of Virginia, in all times past. I have been astonished, not to say amazed, to hear gentlemen complaining of the great inequality betwixt the taxes paid by the people of the East, and those paid by the people of the West; and especially of the taxes paid upon slaves over and above what is paid upon any other species of property, as if these taxes were unjust, and had been imposed upon them against their own consent. And who was it imposed these taxes? Was it the people west of the Alleghany mountains? No, Sir, they have never had the power to impose them. Was it not the Eastern people themselves? Nay, more, was it not the slave-holders themselves who imposed them? Unquestionably it was; for, as you were very correctly told by the gentleman from Hanover, the slave-holders are the freeholders in this country. Was it to please the people west of the Alleghany, that these taxes were imposed in the manner, and on the particular species of property on which they were imposed? No, Sir, it was to please the people here that it was done. The true reason why these taxes have been imposed in the manner so unjustly complained of, is, that the principle, that men shall pay taxes in proportion to the property they own, prevails in practice every where, and is universally considered among the people, to be the only correct principle. If any gentleman doubts the correctness of this position, let him propose to the Legislature to take off the taxes from the shoulders of the wealthy, and impose them upon the poor, and see how the proposition will be received by the people; or let him propose to take the tax off the negroes, and impose it on other kinds of property, and see how that proposal will be received by the non-slave-holders and the holders of few slaves in Eastern Virginia. Sir, I hesitate not to say, that if the Legislature was, at its next session to make either of the changes in the laws, which I have suggested, that the people of Eastern Virginia would not submit to it, and that it would be impossible to enforce the law; for no man, who is either poor, or in moderate circumstances, will ever consent to pay as much tax as his neighbour, who is worth an hundred times as much as himself. What is the rule which prevails in this and all other cities, in regard to taxation? Is it not, that every man shall pay according to his ability? Does he, who is the humble tenant of a hut in the suburbs of the town, pay as much towards the support of the corporate authorities, and keeping up the police, as the owner of those splendid buildings which adorn and beautify the city? No, Sir, and yet they all meet at the polls upon terms of perfect equality. And no man could be found fool-hardy enough to propose, either that all should pay alike, without regard to property, or that each man should have votes in proportion to the amount which he pays into the town treasury. Let us not then, I again beseech you, attempt to act upon, and enforce a principle, against the people west of the Alleghany, which we cannot, and I repeat it, which we *dare* not attempt to enforce among ourselves? Let us give them

representation according to their numbers, and tax them according to their ability to pay.

Upon the subject of guarantees, of which we have heard so much during this discussion, I concur entirely with gentlemen on the other side of the question, in the opinion, that none can be given. For my own part, I will neither offer nor accept of any guarantee, in relation to the taxes which are to be imposed for the support of Government. The only guarantee which ought either to be tendered, or received, betwixt the parties to the social compact, is the mutual confidence which ought always to subsist between them, and without which, the compact ought never to be formed. This was the only guarantee, given by our ancestors to each other, when they formed the old compact, which was sealed with their blood, and it is the only one I will give, or take, now. And, Sir, all the arguments we have heard, founded upon the diversity of interests supposed to exist, between the Eastern and Western people of this State, are arguments in favor of a division of the State, and not in favor of a guarantee, or in favor of putting the Government into the hands of the minority. And if gentlemen can convince me, that our interests are so distinct, or so conflicting as they have represented them to be, I for one, am in favor of an immediate division of the State. And no happier illustration of what I am endeavoring to impress upon the Committee, could be desired, than that afforded by the eloquent gentleman from Hanover, when he called upon us to imagine, what would have been the course which the Adams's, Franklin, Washington, Lee, and the Rutledge's, would have recommended their countrymen to pursue, had this country been equally represented in Parliament according to numbers, at the time the tax was imposed upon the tea consumed in this country. And had the taxes been imposed by the majority in Parliament, against all their united votes, and remonstrances, for purposes which could in no way benefit or interest the people of this country, according to the principles now contended for by that gentleman, and all those who have spoken on the same side, they should have recommended to the people to ask for more power, that being the only guarantee which, in their opinion, can be received, as sufficient for the protection of property. And they should, upon this principle, now so strenuously contended for, (that is, that representation should be in proportion to population and taxation combined,) have asked, that an estimate should be made of the value of all the property in the two countries, or of all the taxes paid in each, that the representation might be equalized according to this combined ratio. But according to my ideas of what would have been proper, they should have done, what they certainly would have done, under such circumstances, that is, they should have recommended, as they did recommend to their countrymen, to refuse to submit to those laws, and declare themselves an independent people. That, Sir, was the only course which was left to the people of this country to pursue then; and if the interests of the people in the Eastern and Western divisions of this State, are so incompatible with each other, that we cannot trust one another, without overturning the fundamental principles of our Government, and putting the power into the hands of the minority, there is no other course left to us now, but to divide the State. But, Sir, I do not believe there is any such diversity or clashing of interests amongst us; if there be, the gentlemen asserting it, have entirely failed in the proof; and until it be shewn, we are bound to presume it does not exist.

I promised to prove, before I took my seat, that the people of the district in which I live, are more united by the ties of common interest with the people in this part of the State, than the people of the Culpeper or Accomack districts can be. And I now proceed to redeem that promise.

It is known that this City and the town of Lynchburg, and the intermediate country, afford our only market for our surplus produce, upon the disposal of which, we depend, for all the luxuries and many of the comforts and even necessities of life. Of course we feel a deep interest in their prosperity. The people of the Culpeper district, trade altogether to Fredericksburg and Alexandria; and the people of Accomack, to Baltimore; they of course, feel a deep interest in the prosperity of those towns, but certainly none in that of Lynchburg or Richmond. We would be disposed to defend this City from an enemy, if it were only to secure to ourselves a market hereafter: they, on the contrary, might find it to their interest that this City should be burned to ashes, inasmuch as it might be the means of driving some of its capitalists to live in the towns which they are in the habit of looking to for a market. We have no other channel, by which we can carry on a commercial intercourse with the world, except the James River; it is therefore our interest to keep up a good understanding with those who live on its banks, and to endeavor to get it improved: they, on the contrary, might be benefited by the navigation being entirely destroyed, as it would keep a great many competitors out of the market. In truth, our interests are so intimately connected with those of the people along the whole course of the James River, that we might as well attempt to make our streams flow in an opposite direction, as to attempt to sever them. Their interests, on the contrary, all tend to

attach them, to people living either out of this Commonwealth, or in some other part of it than this.

A great deal has been said upon the subject of roads and canals, but without much bearing upon the question under discussion, as far as I am capable of judging. The gentleman from the Culpeper district, (Mr. Scott,) for instance, undertook to prove, that all improvements cost more as you advance westward, by comparing the cost of the Potomac canal with some little improvement on the Rapidan. He also made some remarks upon the subject of the James River Canal, which it will not be improper for me to notice. The gentleman seems to be of opinion, that this improvement was undertaken at the instance of some Western man. I think in this he is mistaken, for I have always been under the impression, that this improvement was first suggested by some person living East of the Blue Ridge. I thought it a little curious, that the gentleman should have changed his original ground, which was, that improvements cost more as you go Westward, than they do in the East, when speaking of the James River Canal, and seem disposed to attribute the immense cost of this work, not to its situation in the West, but to the fact of its having been a Western scheme, for the benefit of the Western people. But, Sir, I deny that this improvement was undertaken exclusively for the benefit of the West. It was expected greatly to benefit the coal trade; and as soon as it had reached a certain point, and all the advantages which the East expected to gain from it, had been secured, it was stopped short; and we are now taxed with double tolls, to pay the expense of a work, which has never been of the least benefit to us. And the great cost of this, and other works of the kind, is now to be made the pretext for depriving us of our just share of power in the Legislature, it being apprehended, that we will impose unjust taxes upon our Eastern brethren, to make improvements in the West. I conscientiously believe, that the suspicion is not well founded, and that the whole argument, which has been attempted to be deduced from the supposed disposition of the Western people, to improve their country, at the expense of the East, is unsound, and only calculated to deceive and mislead the members of this Convention.

It has been very often repeated in this debate, that each man in the Eastern part of the State, pays more than three dollars for every dollar that is paid by each Western man into the Treasury. I cannot perceive any good reason why this circumstance should have been so often brought to our view, for I can hardly believe that the Eastern people would be so unreasonable as to expect that they should derive the principal part of the benefits from the existence of the Government, and that the Western people should pay all the expense attending its administration. I have already endeavored to prove, that each individual ought to pay taxes in proportion to his ability to pay, upon the ground, that he who owns most property, derives the greatest benefit from the existence of the Government and of the laws; and upon the same principle, the Eastern people, owning three times as much property as the Western people, and consequently deriving three times as much benefit from the Government, ought to pay three times as much of the expenses. I am also inclined to think, that if there is three times as much money paid into the Treasury by the Eastern people as is paid by the West, there is a still greater proportion of the money expended in the East. Nearly all the money which has ever been expended in the West, has been, what has been expended in improving the Kanawha river, and in making the Kanawha road; and for that, the State derives a tolerable equivalent in the tolls collected. Whilst hundreds of thousands of dollars have been expended in Eastern Virginia, in building and inclosing this very Capitol; in erecting the other public buildings in this city; in making the James River Canal, and in establishing the University, to say nothing of the immense expenditure of public money in building fortifications on the sea coast, which money, although not drawn out of the State Treasury, is expended among the Eastern people for their peculiar benefit, and is collected from the whole people of the United States.

The Western men having been charged with voting away the public money, for Western purposes, it is proper for me to say, that in the course of several years during which I have been in the Legislature, I have always voted very cheerfully for all appropriations which have been asked for, for improving the country, uninfluenced by any local considerations whatever; and that I have always voted as willingly for the expenditure of the public money in the East, as in the West.

There was one idea advanced by most of the gentlemen who have advocated the opposite side of this question, which appeared to be very much relied upon, as proving the propriety of our granting to the minority, the power they ask for, and which I should have noticed before, if the gentleman from Fairfax, (Mr. Fitzhugh) had not sufficiently refuted it already. I allude to the expression so often used, that those who lay the taxes, ought to be responsible to those who pay the taxes. I will barely remind the gentleman from Accomack, who advanced this idea last, that it is not now the case, and never can be the case, to the extent which he seems to contend for, that those who lay the taxes, shall be responsible to those who pay them. For that

whilst his county has more than a thousand voters in it, the principal part of the taxes are paid by about two hundred; and yet the members of the House of Delegates will always find themselves compelled to obey the wishes of the eight hundred who constitute the majority, rather than the minority, who pay the greater part of the taxes. And any member obeying the instructions of the minority, in opposition to those of the majority, would be sure to lose his seat at the next election.

I have only, in conclusion, to notice the proposition for a compromise, made by the venerable gentlemen from Loudoun, for the purpose of remarking, that I am opposed to it; for I fear, if it prevails, there will be constant jealousies and dissensions betwixt the two Houses; and I cannot willingly give my vote for a proposition, subversive of the great fundamental principles of Republican Government, viz: that the majority shall always govern.

Mr. Moore having concluded his remarks, he moved for the rising of the Committee; when

Mr. Doddridge enquired of Mr. Taylor, whether it was probable the difficulty to which he adverted, would be removed in time for the meeting of the Convention to-morrow?

Mr. Taylor answered, that he presumed it would. He had intimated his purpose to the senior member of the delegation; and he should to-morrow send in to the President, his letter of resignation. He hoped his colleagues would be able, by to-morrow, to have the vacancy supplied.

The Committee then rose, and the House adjourned.

SATURDAY, NOVEMBER 7, 1829.

The Convention was opened with prayers by the Rev. Mr. Lee of the Episcopal Church, and the President took the Chair.

The President laid before the Convention a letter from Robert B. Taylor, Esq. (a Delegate from the Norfolk District,) which was read as follows:

SIR,—Many of my constituents have instructed me to support the proposed plan of apportioning representation, with regard to white population and taxation combined; and I have reason to believe that a large majority of the people of my District concur in the desire, expressed in those instructions.

It is due to myself to prevent all misrepresentation of my official conduct. I was elected to this body, with the full knowledge of my constituents, that I favored reforms in the existing Constitution. I came here untrammelled by instructions; and restrained by no pledges. I am unfortunate, indeed, in this, that my opinions do not harmonize with those of my constituents; but I have disappointed no expectation; violated no engagement; betrayed no trust.

Having always believed, and maintained, that the value of representative Government mainly depends on the principle, that representation is only a mean, whereby the deliberate will of the constituent body is to be expressed and effectuated, no act of mine shall ever impair the principle. Had my constituents instructed me on some matter of mere expediency; or required me to perform any thing, which was possible; it would have afforded me pleasure to testify with how cheerful a submission, I would give effect to their opinions, rather than my own. But they ask what is impossible. They require me to violate my conscience and the sentiment of filial devotion, which I owe to my country.

Believing, as I conscientiously do, that the measure I am instructed to support, is hostile to free institutions; destructive to equality of right among our citizens, and introductive of a principle, that a minority, on account of superior wealth, shall rule the majority of the qualified voters of the State, I should be guilty of moral treason against the liberty of my native land, if I allowed myself to be the instrument by which this mischief is effected. In this state of mind, by executing the wishes of my constituents, I should justly subject myself to their reproaches, for my baseness, and to the more insufferable reproaches of my own conscience.

One mode only remains to reconcile my duties to my constituents, to the higher and more sacred duties I owe to myself, and my country. It is to resign the office, which they conferred upon me; and thereby to enable my colleagues to select a successor, who more fortunate than I am, may give effect to their wishes, without violating any sentiment of private and public duty.

Allow me to ask that this letter may have a place on your Journal. Forgive the feeling, which prompts this request. If any eye shall hereafter read my humble name, I wish that the same page, which records my retirement from your service, may also record the motives (mistaken perhaps, but not unworthy,) which occasioned it.

I leave the Convention, Sir, with sentiments of profound respect, and veneration for the virtue and talent, which ennoble and adorn it. My heart will still attend your counsels; and I shall not cease to supplicate the Almighty, that he may so inspire and direct them, that Virginia may be regenerated, united, free and happy.

I have the honor to be, your obedient servant,

ROBERT B. TAYLOR.

JAMES MONROE, Esq.

President of the Convention.

On Mr. Mercer's motion, the letter of Gen. Taylor was laid on the table.

Mr. Grigsby, of the Borough of Norfolk, has been elected by the rest of the Delegates as a Delegate to serve in the place of Robert B. Taylor, Esq. resigned.

The standing order having been read, the Convention resolved itself into a Committee of the Whole on the Constitution, Mr. Powell in the Chair.

Messrs. Scott and Green made some explanations in relation to the remarks presented by Mr. Moore of Rockbridge on Friday, on the improvement of the James River.

Mr. Scott referred to the Journals of the House of Delegates, to shew that on various occasions members from the region of country below the Ridge and in the Valley had voted with the West for objects of internal improvement, even when their own country was not specially interested.

Mr. Green detailed the circumstances of the compromise, by which the members from the lower country were induced to consent to a larger appropriation for the James River improvement, than they would otherwise have done, in consequence of a stipulation in the act for that object, that the tolls should not be raised until the rate of transportation was lowered.

Mr. Moore explained on the same subject; shewing that he had voted for internal improvements which were on the West or East of the mountains. He disclaimed all sectional feelings, however other gentlemen might entertain them.

Mr. Leigh hoped that the Committee would rise, to give a gentleman on this floor (Mr. Giles) an opportunity of addressing them to greater advantage hereafter; his indisposition this morning was aggravated by the state of the weather. He said besides, that there were at least five gentlemen absent. He said he was perfectly willing to withdraw his motion, if any other gentleman was prepared and willing to take the floor.

Mr. Doddridge repeated the same sentiment, and hoped that some gentleman would rise, if ready to address the Committee.

But no one rising for that purpose, Mr. Doddridge made a motion for the Committee to rise, which was carried without opposition; and then Mr. Powell reported that the Committee had, according to order, taken into consideration the subject referred to them, but had adopted no resolution thereon.

And then, on Mr. McCoy's motion, the Convention adjourned until Monday, eleven o'clock.

MONDAY, NOVEMBER 9, 1829.

Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Horner of the Catholic Church.

According to the standing order, the House went into Committee of the Whole, Mr. Powell in the Chair.

The following is the substance of Mr. Giles' remarks, taken down by a stenographer, in his own language, and corrected by Mr. Giles himself.

Mr. GILES said: After all the subjects of this debate have been so fully elaborated, and thoroughly exhausted, it may be deemed presumption in him to attempt a further elucidation of them; repetitions too, might be deemed intrusive on the time, and even wanting in respect to the intelligence of the Committee. Notwithstanding these discouragements, he felt impelled by an irresistible sense of duty, to extend the debate still further, not with a vain hope of throwing new interesting lights on the subject; nor with a hope of obtaining a lean majority. A lean majority on either side would be a poor triumph of friends over friends; and still more so, on the affirmative than negative side of the proposed amendments to the Constitution, and would be better calculated to attract the distrust than the confidence of our constituents. But his principal inducement for continuing the debate, was a faint glimmering hope of approaching nearer to unanimity in whatever measures may be adopted, than we seem to be at present, from any indications now before us. Unanimity would, indeed, be an effect worthy of this great occasion, and worthy the sacrifice which he considered every individual member called upon to make, to obtain the objects of the Con-

vention. Without some approach to unanimity, he feared all our labours here, might be worse than unavailing. Why should we not approach this unanimity? All see that there are sufficient inducements to make the best effort, and fortunately, not without the authority of great example on this occasion. The existing Constitution which we are called upon to examine, modify, or abolish, was produced by unanimity. Our forefathers were magnanimous enough, after a laborious investigation, conducted with the most ardent zeal, to agree to it by an unanimous vote. And why should not we follow their noble example? It was said that this unanimity, and this very Constitution were produced by a sense of danger; and were the effects of haste and alarm. He was sorry to hear this suggestion repeated, because it was unfounded. It is true that our forefathers did act in imminent peril, and under full sense of that peril, but it is not true, that the instrument they produced, was the effect of haste or alarm. Though they were highly sensible of the danger; it never disturbed the equanimity of their minds, during their whole proceedings. They went on coolly and dispassionately, notwithstanding the dangers that surrounded them, and the final result, was the production of this Constitution. This danger, far from being appalling, was viewed by them with sport, contempt, and even derision. He had been frequently told, that nothing was more common, than that the members should sportively jeer each other, with saying, we *must* hang all together, or *be* hung one by one. Is it possible, that any state of mind could have produced a stronger incentive to exert their best efforts, for arriving at the best results? Did not this state of mind afford the strongest incentives for calling into action every feeling of the heart, and every dictate of the head, to the perfection of their great work, with one united voice? They accordingly presented to us, the best Constitution that was ever presented to any people under the sun; accompanied too, with perfect unanimity. The history of their proceedings, will show that although, in the commencement of their discussion, there was as much difference of opinion amongst them, as amongst ourselves, and those opinions maintained with as much ardour and zeal; yet they nobly compromised all their differences, and came to an unanimous result. We are in a different situation. We are in a state of perfect security. No danger threatens us. We are perfectly free. Yes, Sir, perfectly free to indulge the wildest speculative visions of our imaginations in search of philosophical abstractions, to introduce into our fundamental laws for practical purposes. Whence arises this state of security? Surely from the patriotic and heroic labours which our venerable ancestors performed under different circumstances: We are so secure from the moral tendency of those fundamental laws, with which we were blessed 54 years ago, that there is no fear that we shall *hang one by one*, even if we should refuse to *hang all together*. Although we are perfectly free from the apprehensions of personal injuries, we are not without the strongest inducements, to make us combine to use our best efforts in producing unanimity in our proceedings. Should we fail in the objects for which we are called together, we would lose the confidence of our constituents, and whatever political fame and standing we have acquired; and should disappoint the expectations of our fellow-citizens, and of the world.

He mentioned these circumstances, to show us the necessity of banishing all prejudices, passions, and prepossessions; and, if possible, to be unanimous in our results, whatever they may be. He begged to be permitted to remark, that he had been delighted with all the arguments presented to the Committee, not only on account of their elaborate researches, and their splendid display of talents, eloquence, and instruction; but on account of their honorable frankness and candour. This remark was intended to apply equally to both sides of the question. The whole debate appeared to him to have afforded a new and conspicuous example of the just celebrity which Virginia has obtained for morals and for principles. The arguments on both sides, were presented front to front, and with so little disguise, equivocation or evasion, that to form a just comparison of their respective merits, it was only necessary to re-view them in their state of confrontation. But, while he felt this pleasure at the progress of the argument, he could not avoid expressing the deepest regret, that a difference of local interests, should have interposed to interrupt this happy spirit, in conducting this discussion. Such local interests, however, do exist, and they are too important either to be overlooked or disregarded. To obliterate them, would seem to be impossible. This difference of interests consists in the unequal position of the slave property in this State, and this interest is so important, that the production of the labour of the slaves, forms the foundation of one third of the whole taxes of the State. Although confronted at the threshold by this unfortunate stumbling block, it was the duty of all to meet and subdue the difficulty, or to apply such remedy as would be acceptable to all.

The venerable gentleman from Loudoun, (Mr. Monroe,) thinks emancipation impossible, without the aid of the Federal Government; and, perhaps, it would not be possible even with that aid—an aid which, could it be had, surely would not be desirable to any. He hoped the venerable gentleman would excuse him for saying, that he did not see the precise applicability of his remarks to the precise subject un-

der consideration, and he could not avoid saying, that his feelings were much excited at the mere suggestion of calling upon the Federal Government for aid in so delicate a question. What would be the effect of calling on the Federal Government, to aid us in the common, ordinary, municipal regulations of the State. Some gentlemen call for the aid of the General Government in the prosecution of Internal Improvements. The venerable gentleman from Loudoun, thinks it may be required for the emancipation of our slaves, and says, "he even doubts if we were disposed to divide the State, whether we should be permitted to do so by the General Government." What will be the effects of all these dependencies on that Government? The effects must be the annihilation of all State rights—the destruction of the State Governments—and more, the amalgamation of a great mass of power in the Federal Government. Have gentlemen reflected on the tendencies of a vast momentum of power, collected in any hands, which are beyond their control? Is it not inevitable, that it must beat down the barriers of all political powers, which may be interposed to palsy its influence by division? The best we could hope under such an amalgamation, would be a consolidated despotism. This consummation could be desirable to none. He had merely made these general remarks with a view of protesting against the interference of the General Government, and of preventing their intrusion in the discussion before us, by disposing of them at this early period. Were it not for this important difference of sectional interests, he would indulge the most flattering hope that the Convention should be enabled to improve the condition of man, by adding to the great political lights heretofore shed on this State, and the whole world, by our venerated forefathers. He considered the science of politics yet in a state of infancy. While he observed the march of the human intellect, in bringing to perfection all the other arts and sciences, viewing with wonder the improvements which have been made in the last century, or perhaps still more in the last half century, he could not but observe, that the science of politics, had not kept pace in improvements with any of the other arts and sciences. The only effort at improvement, was the one originally adopted by the framers of our Constitution. This was only fifty-four years ago; a mere speck in the progress of time; and had introduced a new and just principle in the science of politics—one in direct hostility to the pre-existing basis on which all other Governments were founded. It opened a new æra in the science of politics, and, he hoped, sincerely hoped, that our American statesmen would abandon that system which had so long prevailed, and had proved so destructive to the rights and liberties of the human race; and found a new science upon the great discoveries of our forefathers. We have not done so. We have rather retrograded to those principles which our forefathers had abandoned. We have gone back to imitate the British system, as far as regards practical, political economy, after having established the most happy and beautiful fundamental system of our own. And this is one cause why we have not added a new science to the existing political economy, suited to our great developments in fundamental principles. There is another cause. All other Governments were, as he conceived, founded on fraud and backed by force. The few who had by combinations usurped the rights of the many, and possessed themselves of all the proceeds of their productive labour, have employed all their means to prevent further improvements in the science of politics, to avoid the detection and exposure of the fraud, which was the foundation of their systems. We know it was their great object to prevent an examination of these subjects, and to such an extent did they carry their rigorous vigilance, that the first patriots, Hampden and Sydney, fell victims to their patriotic enquiries into the science of politics. These causes contributed to throw the science of politics back, and to prevent it from making its way under the influence of that march of intellect which pressed forward all the other sciences.

He should suppose it was the duty of this Convention, to turn their researches into political science. A great discovery had been made in opposition to former systems: that all the rights of Government are founded in the consent of man, and that consent is ascertained through the social compact, or, in other words, the written Constitution. There is a difference of opinion, however, in regard to the true characteristics of the social compact, and particularly in relation to the parties to it. In the origin and progress of the social compact, every member is a party to it; each representing his own individual interests, as his own sovereign, uninfluenced by the majority. At its completion, the parties become changed by the consent of all its members. The compact is then made to consist of only two parties, the governors and the governed; and whether the majority shall exercise the Government or not, or to what extent, must depend solely on the written compact. Gentlemen had imputed to the honorable gentleman from Orange, to whom he listened with great pleasure, the assertion, that a minority ought to govern, as well as a majority. This imputation had been extended too far, if he had rightly understood the gentleman from Orange. He did not understand that gentleman, as declaring, that a minority ought, in any case, to exercise active, affirmative legislation, but that a minority was sometimes invested with authority to legislate, in a negative capacity. A minority cannot rightfully *govern*, in any

case, but it is often used, as a fit instrument to prevent a majority from doing what it ought not to do. The rights of the majority depend solely upon the compact. It will be seen, there, how far a majority may govern, and how far it ought to be checked. Here we have a local interest, which is admitted by all to be applicable to peculiar sections of the State, but not to the whole of it. This local interest must be secured by provisions in the fundamental laws; if not, upon general principles, the majority would govern it. If it be improper that the majority should govern, where there is a *particular*, local interest, the minority should have a power of controlling the majority, so far as to afford protection to such particular, local interest. Such was the case in the Federal Government, as was illustrated by the gentleman from Orange; from whose lucid remarks he derived both pleasure and instruction. He took it for granted, that the majority had no rights but those that were vested in them by the compact.

Under our written Constitution, or social compact, the science of politics was divided into two parts. One great branch of the science, is that which relates to the organization of the fundamental laws. And the other branch is, that which relates to the policy to be observed by the practical government, as established by these laws. No effort has been yet made to enquire into these subjects, as distinct branches of political science. The American mind has been drawn from the contemplation of these subjects by imitation. The love of imitation is one of the strongest passions of the human mind; and instead of elaborating a new system, suited to our own discoveries, we have been led into the imitation of British systems of practical, political economy. Here, then, is a new field opened before us, for the extension of political science.

An example of this spirit of imitation, may be seen in the organization of the Executive of the United States. There we have exhibited the anomaly of an Executive, attached to a republican Legislature, having more monarchical than republican tendencies. We have thrown so much power and patronage into the hands of the Federal Executive, that we must see the danger which threatens us from its organization. Yet that Executive is now held up to us for our imitation. How this happened he could not perceive, if gentlemen had the same views of the organization of the Executive of the Federal Government, that he had, and the same views of the peculiar fitness of the Executive Government of Virginia, as it is now established to a republican form of Government. So far from abandoning the old system, and falling into the gulph of imitation, an error, the strongest of the natural propensities of man; we should call on those who may hereafter aid in amending the Federal Constitution, to follow the example of Virginia. If the Virginia system were transferred to the United States, it would be the best improvement that could be adopted. The events of the last four years must be sufficient to satisfy every gentleman, that instead of calling on us to imitate the Executive of the Federal Government, if that Government could be brought to imitate our system, it would be the most important amendment that could be devised in the formation of its organic laws.

The gentleman from Loudoun (Mr. Mercer) whose eloquence he had listened to with great pleasure, had pointed to the Executive Department, as one of the great defects in the present Constitution of Virginia. He was not so much surprised at the reference, as he was at the grounds upon which the gentleman had rested his objections. They were founded on a supposed want of responsibility. That want of responsibility should be alleged against it, Mr. G. said, attracted his wonder. If there was any responsibility in any Executive under the sun, it is in ours, as at present organized. The gentleman, therefore, has taken up his notions, without a sufficiently minute examination; for, in fact, the responsibility of the Virginia Executive, was the strictest that human wisdom could devise. What is the responsibility of the Executive? The Executive Council are required to keep a journal of their proceedings, which is signed by every member present.

The agent thus renders an account to his principal, under his own hand, which can always be referred to, as evidence of the manner in which his duties are fulfilled. What are the duties of the Governor? His accountability is as strict, though not as severe as that of the Council. He is at liberty to follow or refuse to follow the advice of the Council. He acts on his own responsibility; he is not bound by the Council. The journal shows his own acts also, and consequently his responsibility. How, then, is he screened from his own responsibility? This Executive, then, is wisely ordained. It is the wisest effort of the great genius of the writer of our Constitution, in making the whole Executive responsible to their electors, as connected with a republican Legislature. He had been struck with the remarks of the gentleman from Loudoun, (Mr. Mercer) and had wondered how a gentleman of such intelligence should have fallen into such an error, as it appeared to him to be. He had felt it to be his duty to do away the imputation, not only from a sense of justice to the Council, but to this and to all nations. This Council had been in operation fifty-four years. If there had been any misrule, the gentleman could point it out. He invited gentlemen to attend to the condition of the Executive, not only at the

present moment, but from the commencement of its organization, and would thank them for any criticisms on any of its proceedings, and particularly those of the present day. There was no merit in the administration, but a merit of principle arising from responsibility. If we have had an Executive in Virginia, which has gone on so smoothly, so easily, so little known, and scarcely felt for fifty-four years, discharging all its duties, why should it now be changed? If it should have done all that was expected, he would ask if there was not some hazard, some boldness, in changing it for something untried and unknown? As to want of power in the Executive, so far as his experience had gone, although he had been often accused of an inordinate love of power, he then had as much power as he wished to have, or ought to have, or as any other human being should ever have. Executive patronage and power were the sure causes of all political mischiefs. The demoralizing influence which we have seen throughout the whole United States, arose mainly from giving too much patronage to the Federal Executive. But, gentlemen had gone further, and made some more general charges against the Constitution. The gentleman from Brooke (Mr. Doddridge) to whom he always listened with pleasure, had said, that the Constitution was made amidst peril and alarm—that it was constructed hastily—adopted under the exigencies of the times, and was never considered as a permanent, organic law. He begged to be permitted to repeat the words of the gentleman, as taken down in the newspapers, not with a view of throwing them back upon him by way of retort; he was incapable of such rudeness; but from his extreme reluctance at mis-stating the words of any gentleman. The words are the following:—"The history of the State would show that the present Constitution was adopted in a period of danger and alarm; that it had been hastily enacted, was never considered as an organic instrument, deliberately agreed upon with a view to its being permanent, but adopted under the exigencies of the times, merely as a temporary expedient." Suppose, for a moment, the Constitution was a chance-medley—a God-send. If it were a God-send, it was the most blessed God-send with which man was ever favoured. So happy have we been under it, we have lived so harmoniously, and enjoyed ourselves so much at our ease, as almost to forget that there was any government. Government may be said to approach perfection, when man does not know that he is governed at all. Would gentlemen discard the Constitution merely because they conceived it to be a lucky hit, and not a dictate of wisdom; because they deemed it a special interposition of Providence rather than the production of the wisdom of man? We ought to cherish it and make the best possible use of it, for such is the manner in which Christians ought to treat every God-send. So directly contrary was the argument of the gentleman, to the views he entertained as to the manner in which the Government was formed. To show the mistake into which the gentleman from Brooke had fallen, with respect to the Constitution, he would read an account given by the President of the Convention, the celebrated Edmund Pendleton, whose name, in itself, should give to every thing he said, the most unquestionable sanction. He would not fatigue the Convention with much reading, but the mistake was so serious, and called so loudly for correction, that he must beg its attention to a single paragraph, because these mistaken opinions prevailed on this subject throughout the whole State. The paragraph he should read, is found in a letter from the late Mr. Jefferson to the late Judge Woodward, giving an account of the proceedings of the Convention. He would read but a few sentences.

"He (Mr. Pendleton) informed me (Mr. Jefferson) afterwards, by letter, that he received it on the day on which the Committee of the Whole had reported to the House, the plan they had agreed to; that that had been so long in hand, so disputed inch by inch, and the subject of so much altercation and debate, that they were worried with the contentions it had produced, and could not, from mere lassitude, have been induced to open the instrument again: but that being pleased with *the preamble* to mine, they adopted it in the House by way of amendment to the report of the Committee; and thus my preamble became tacked to the work of George Mason."

He begged the gentleman's best attention to this historical account of the proceedings of the Convention, and they could not avoid seeing the direct contrast between it and the account given by others. So far as he was enabled to do so, it would now be his pleasing task to defend the Constitution from other imputations. He regretted his inability to do justice to the subject. In the first place, the wisdom of our forefathers fixed the basis of the Constitution, on land—on earth—mother earth. We are taught, when we pray, to say to our Creator, "in thee we live, and move, and have our being." He would extend the reflection so far, as to show that the instrument in the hands of God, was land—earth—emphatically our mother earth, through which we do "live, and move, and have our being." We look to it for our existence, and we look to it for our subsistence. It gives us the coarsest food, which indigence requires, and supplies us with all the highest luxuries which refinement can desire. It yields our ordinary covering, and affords all the ornaments which decorate the fair of the land. From the lowest necessity to the highest luxury, we are indebted for all to

our mother earth. Are there not, then, an affinity and an association between our mother earth, and the beings who exist on it? Would it not be unreasonable and unphilosophical to establish a Government for the inhabitants of the land, without reference to the land itself? He thought it certainly would be—he might be too much enchanted with the idea, that there existed an intimate connexion and relationship between the land, and its inhabitants—but it had grown out of the best reflection he had been able to give to the subject. Yes, he considered land as too important an instrument in the affairs of mankind, to be entirely disregarded, in the formation of the organic laws for the government of its inhabitants. He would say land is the best and only solid, indestructible foundation for Government, unless we re-assert the divine right of Kings, which is nothing more than a mere human invention, founded in fraud and falsehood. The wisest provision that ever was made in any Constitution, is that which declares, that the right of suffrage should remain as it then was. It was then based on the freehold right of suffrage. But he did not mean to examine that question now. He mentioned it merely to attract the reflections of other gentlemen. If any other occasion should occur, and his health would permit, he would then go into a further examination of the subject, but he was fearful that he should not be able at this time to go through all the observations he had intended to make. Our forefathers then fixed on land as the basis of our Constitution, and adopted the Republican form of Government. The means for carrying the Republican system into effect, are made to consist of individual and intermediate elections combined. He conceived this to be the wisest combination of the elective franchise, that ever was devised. It is indispensable in these United States. The necessity arises from the extent both of territory and population. He knew that the popular current was running strongly against the principle of intermediate elections, and that an attempt was making in this country, to throw all governmental duties, in relation to elections, upon the people, in their individual capacity. This is visionary and impracticable: A mere *ignis fatuus*, and calculated to be onerous on the people, whom it is intended to benefit. He was satisfied, that the people could not beneficially exercise this right, to its full extent, in a great, extended, populous community; and, therefore, he thought it was proper for them, in certain cases, to delegate it to their legislative representatives. Intermediate elections are a refinement in the representative system, known only in the United States; and instead of extending its utility, we are throwing ourselves back upon the original principle of representation, by man, solely in his individual character. After this compound system of election, the Government is based, as far as practicable, upon a separation of departments, as checks on each other—the Legislative, Executive, and Judicial. These checks are introduced for the purpose of controlling the unlimited will of the majority. Unlimited will, wherever it be found, whether in the hands of a majority or a minority, is despotism. He had bestowed much reflection on this subject, and it had produced the most perfect conviction, that despotism is the inevitable effect of unlimited will. The utility of these checks, then, is seen in controlling this unlimited will, wherever it may exist. These are the fixed and stable pillars, upon which rests the useful and beautiful superstructure of our Constitution. These pillars, he feared, were now about to be torn down, and their fragments scattered to the winds, although he could not help hoping for better things. The merits of this Constitution were demonstrated by its beneficial results for 54 years; conspicuously seen by the present moral condition of our society, over any other known to him. If any other equalled it, in morals and in principles, he should be glad to be informed of it. The merits of the Constitution are still further seen, in the harmonious co-operation of all its parts, to produce an unity of object—one great, common good. Its merits are still further seen, in the peculiar favor and protection afforded to non-freeholders.

In all complicated controversies, between the poor and the rich, it is known that there exists a very strong bias in favour of the poor. That during the short time he was engaged in the practice of the law, he recollects, that he deemed it a compliment to any County Court, in which justice might be had by the rich, in any complicated controversy with the poor; not from any disposition in the Court to do injustice to any, but from the difficulty of counteracting the popular bias in favour of the poor; and he believed this was a general impression. He hazarded nothing in saying, that the poor are better protected against the influence of the rich, under our Constitution, than any other in the United States. Whilst, therefore, he disclaimed all popular views, he considered himself the real friend of the poor, in endeavouring to sustain our system. Under its peculiar organization, justice is administered to the poor freely, without reward; and the whole of his contributions, of every description, do not exceed 2s. 3d., whereas, the costs of a single warrant, under the perquisite system, which is proposed to be substituted for the existing one, would cost him, perhaps, ten times as much as all his present contributions put together. He begged to call the attention of the Convention to another point. Much had been said about the order and decorum of our elections, and nothing more was said than was merited. What do we hear from other

States, to which we have been referred for precedents; but which the gentleman from Orange had truly regarded as experiments, in opposition to experience? Look at every State where Suffrage has been extended to Universal Suffrage, and you will see universal disorder, intoxication, and demoralization of all sorts. He had been amused for a day or two past, in noticing what was doing in the State of New-York. The Convention of that State, had, a few years ago, conferred a blessing on themselves, by extending the Right of Suffrage to people of all colors—red, black, white and yellow. It was *philosophically* asserted, that mere difference of colour ought not to have any influence whatever, on any question of rights. He had read with amusement, one production headed, “confusion worse confounded.” In the elections just had in New York, he found that there were two parties, Jackson and Anti-Jackson, each nominating a regular ticket for their elections. Another nomination, however, unexpectedly appeared, supported by what was designated Miss Fanny Wright’s party. Yes, she started on the principle of the Agrarian Law; dividing property, morals, and all the gifts of God equally, in common, and indiscriminately amongst the whole of “We the people.” For the two first days, Miss Fanny Wright’s ticket was far ahead, and great was the alarm, lest it should succeed. By great exertions of all parties in New-York, and by Providential interposition, Miss Fanny Wright’s ticket did not succeed. (Since the delivery of this speech, it appears that one of the persons on Miss Fanny Wright’s ticket did actually succeed.) Thus that State has escaped from an Agrarian Law, and an utter subversion of morals and principles for the present, but for how long, God only knows. Gentlemen will probably reply, that the population of New-York is heterogeneous, and not like ours, homogeneous. This, however, all must admit, is a slender distinction, on which to place all the dearest rights and liberties of man: A mere presumed difference between heterogeneous and homogeneous. Suppose this presumption to exist in degree. All must admit that it must be a very limited degree. May not gentlemen be mistaken in the conclusions they have drawn from it? Under similar circumstances, men are the same every where; and similar causes will always produce similar effects. Its merits may still further be inferred, from the honorable compliments awarded it in this debate, even by its adversaries, in the frank and candid admission of the honorable liberality of the slave-holders to the non-slave-holders west of the Ridge, and yet more from their total failure to show any misrule whatever under it, although emphatically called upon to do so by his most worthy and honorable colleague. (Mr. Leigh of Chesterfield.)

Under its benign influence, we have enjoyed all these great, civil and political blessings, in the midst of many others, for 54 years. In no one instance has the wisdom of our forefathers been more conspicuously displayed, than in the means chosen to effect these great ends. These have consisted in the peculiar organization of the County Courts, and in throwing a great preponderancy of power into the hands of the middling class of society. He would rather have a Government dependant on the middle classes, relying upon their uniform moral tendencies, without any check or balance whatever, than a Government entrusted to either of the extremes of society, with all the checks which wisdom could devise. The organization of the County Courts is marked with peculiar wisdom. The County Court magistrates, with their judicial functions, are also entrusted with a portion of the Executive powers. These magistrates are scattered in neighborhoods, nearly equally, throughout the whole State: Each of them possessing a degree of moral influence in his own neighborhood, which, with his official influence, when combined together, forms the strongest Executive in the world.

Hence, the celebrity of Virginia, for obedience to law. Hence, it has been so frequently and emphatically said, that *law* is the only *despot* here. Here is seen an exception of the common maxim of an unity of the Executive, and is exhibited at the same time the most numerous and most efficient Executive in the world; substituting for physical force, in a single hand, its moral and official influence combined; acting more upon the affections, than upon the fears of the people. Another peculiarity of this organization, is, that the magistrates are totally destitute of compensation or reward, while acting in their Judicial and Executive capacities. Their only perquisite is their monopoly of the Sheriffalty, and it is now proposed to deprive them of even that inadequate chance of compensation. Even that compensation is never received in their Judicial capacity: and this is one of the peculiar merits of the system. Justice being thus administered freely, without reward, tends to keep its current pure and unpolluted. We received our County Court system directly from our Anglo-Saxon ancestors, but it may be traced back more than 1500 years from the present time, and beyond the period when the Saxon became converted into the Anglo-Saxon. During that long period of time, and amidst all the fluctuations of human affairs, it has been attended with the happiest effects.

He had thought proper thus to present to the Committee, this mere outline view of the subject, but it was far from being exhausted, and he greatly feared that he had fallen far short of its merits. He hoped, however, that he had in some degree rescued the

Virginia Constitution, from the unmerited imputations thrown against it; and that he had proved it to be founded on the true principles of political science.

He would now accept the invitations of several gentlemen, to enquire into the condition of man, "previous to a state of society," about which he found some differences of opinion. He observed he was placed in a singular dilemma. He felt himself compelled to agree with gentlemen in their premises on one side of the question, and to differ with them in their conclusions; whilst he agreed with gentlemen on the other side in their conclusions, and differed with them in their premises. Although he was charmed with the eloquence of his worthy colleague (Mr. Leigh of Chesterfield,) and of the hon. gentleman from Northampton (Mr. Upshur,) he was reluctantly compelled to differ with them, in the opinion, that there never existed a state of nature; whilst he concurred with them in the conclusion, that majorities had no right to govern, but that derived from the social compact. At the same time, notwithstanding he concurred with the hon. gentleman from Loudoun (Mr. Mercer,) who had displayed all his powers of reasoning, calling to his aid all the brilliancy of oriental imagery on this occasion, in the opinion that man had existed in a state of nature, he nevertheless felt himself constrained to dissent from the conclusion, that majorities had necessarily a right to govern in such a state. Mr. G. said, he would tell a plain tale, and his only effort would be to be understood. He believed there was a state of nature, and that it was susceptible of proof, both from history and from the reason and nature of things. A single fact and remark only, he conceived, ought to be sufficient to satisfy every reflecting mind, that there must have been some condition of man previous to his social condition. All admit that the social compact was made by men—by numbers of men. Man, therefore, must have preceded the social compact. If so, in what state was he? Surely in that state which has generally been designated a state of nature. He believed there was an intermediate state between the two. It might be called the domestic or family state of man. If so, both the natural and family state of man must have preceded the social. Although the hon. gentleman from Northampton, had partially denied the existence of a state of nature, and had referred to Bible history on that point, he had, however, admitted that the social compact was grounded on a feeling of property. This is admitted as one ground, but it is denied that it is the principal or the strongest ground. Whence was this feeling of property derived? It could only be from a right of property and a sense of that right. He insisted that the social compact was founded more in a feeling of weakness and of want. This feeling was so strong, as to amount to an absolute necessity for entering into the social compact. In his reference to the Bible history, the hon. gentleman had given some account of the subjection of Eve to Adam, and of the condition of that family, at the early period of their creation. The hon. gentleman should have extended his historical researches somewhat further, and he would have found that they abundantly proved, not only the right and possession of property in a state of nature, but also the existence of a domestic or family condition of man. He would have found, that Cain and Abel both made offerings to the Lord. The one, the first fruits of his land and labour—the other the firstlings of the flocks he tended. Abel's offering was most acceptable to the Lord, but the right of property was not denied by any one—the right being derived from occupancy and labour, and sanctioned by the innate or moral sense of man, ascertained by common consent. Mr. G. said, we were apt to fall into errors for want of due reflections upon the longevity of the anti-deluvians, compared with the little span of life permitted to the present race of man. To avoid such errors, he had made enquiries as to the age of Cain, at the time he committed the bloody murder upon his brother—and he had found that Cain was at that time, a mere lad approaching to puberty, but had not yet once thought of matrimony, although he had reached the age of one hundred and twenty-eight years, and his brother Abel one hundred and twenty-seven. Here, then, is complete evidence of a state of nature—at least one hundred and twenty-eight years after the creation. The right of property being unquestioned in each of them, and there being no one to punish Cain for his bloody crime—Adam having relinquished all parental authority over him. God, however, took Cain into hand, put a mark upon him, and sent him into the land of Nod, where, it is said, he married a wife and built a city. Should there be any sceptics bold enough to doubt the account given by the sacred historian, from a suspicion that there were other families existing at the time of Adam, of which the sacred historian was unapprised, Mr. G. would reply, that presuming that to be the case, the account given of the family of Adam, would form the Natural History of any other family which might be in existence, previous to the social compact. (For Cain's age at the time of the death of Abel, see Rees' Cyclopaedia, corresponding upon this point with Lemprier's Chronological table prefixed to his Classical Dictionary.)

Mr. G. said, he was of opinion, that there had been such a state, as a state of nature; and that man had been driven from that state by the wants of nature. Indeed, that all creation was founded upon a principle of relative dependance; and man rendered more dependant than any other animal—clearly manifesting thereby, a Providential

intention to drive him from a solitary, to a social state. The same principle of relative dependance, is observable amongst nations, as well as individuals, and is the true foundation of commerce. The mischiefs arising from the mistaken, barbarous notion of the positive independence of nations, introduced into the practical Government, by our late miserable and incompetent rulers, have been incalculable. Yes, Sir, greater than could be compensated for, in all time, by the same deluded, unfortunate political economists, if their lives were prolonged to the age of Methusaleh, and spent in the performance of good instead of evil deeds. Their miserable cabalistical false misnomers or nick-names—"National Industry;" "Domestic Industry;" "Home Market;" "Protection of Manufactures;" and above all, the "American System," he verily believed, had each of them cost the State of Virginia above 1,000,000 of dollars, since the year 1816; and he was confident that every gentleman would come to the same result, who would take the trouble to make the calculation from correct premises.

Whilst he admitted a state of nature, he denied that majorities had any influence in such state. Whence the derivation of the term "*Sovereign People*?" Surely from man in a state of nature, where he was his own sovereign. If he were not sovereign there, he was sovereign no where. If he were sovereign there, then we have the basis of his subsequent sovereignty. This seems to him to be a self-evident proposition. This enquiry leads to another more important one—to ascertain what are the duties of Government; and what is the object of the social compact? He would correct the expression. What is the object of the social compact, and what the objects in the formation of every free, legitimate Government? Exclusive of the public safety, one object is the protection of persons, the other the protection of property. Government was instituted for the protection of all human rights: adequate powers ought, therefore, to be given to the Government, to ensure the protection both of persons, and of property. A question, then, arises, how much power ought to be given? Is it to be unlimited power over all the rights of man? If so, all his natural rights must be taken from him. If only a portion of his rights are to be taken, what portion? How can the Government be so organized as to make a distribution of rights between the individual in his native character, and the Government in its corporate character? Here a question arises; ought a Government to be an active, or a passive machine? If Government be an active machine, you must give all the requisite powers and properties which belong to an unlimited Government. If it be a passive machine, less power is necessary, and the only difficulties will be found in the proper distribution of rights between the governors and governed. Upon this important point, differences of opinion exist. There are some gentlemen who claim for the General Government, the whole proceeds of the labour of the nation, as the great desideratum of its political economy. If so, in vain do we sit here; in vain are we here, if the proceeds of all labour must be given up to the General Government, not leaving even a modicum for ourselves, as the basis of our Constitution. Presuming, then, that Government is to be formed by a distribution of the natural rights of individuals between themselves, and the Government, what portion ought to be given to the Government? Surely the smallest portion which will suffice for governmental purposes. If all be given, none of course can be left to the management of the individual. He had bestowed much reflection upon the inquiry, as to that portion of rights, which should be surrendered to the Government, and that which should be retained to the individual. Perhaps the most effectual mode of ascertaining this point, would be to enquire what rights of nature, man, in his individual capacity, can manage better than the Government, and what portion Government can manage better than the individual. From all his reflections upon the subject, he had concluded that there were but two descriptions of rights, which the Government can manage better than the individual. One is, the right of every individual to do himself justice in his natural state; the other, the smallest portion of property that will suffice for governmental purposes. It will be perceived, that an exact distribution of rights, according to the preceding rule, must necessarily approach nearly to the production of a perfect Commonwealth. Here is opened a still wider field for extending the researches of all lovers of political science. He had himself concluded, that all rights, of every description, which individual man could manage at all, he could manage, and would manage better than the Government; and the degree of liberty enjoyed by him, would depend upon the greatest portion of these rights, left to his own management. The only reason why any rights should be given to Government, arises from the incapacity of man to execute them by his own means. He has not power to do justice to himself in a state of nature, because he will necessarily be brought in conflict with others, and he will be compelled to abandon that power merely from his incapacity to execute it. Hence, a portion of power must be given to Government to enable it to do, what the individual cannot do. Hence, the necessity for any concession of power, and he thought that no concession ought to extend beyond the right of doing justice, and the surrender of that portion of property, which is found indispensable for defraying the expenses of Government. In that case, Government would be a passive machine, ensuring liberty and safety to

the people—rendering justice to all. Mr. Giles could not help expressing his surprise, that several gentlemen, and amongst the rest, the gentleman from Brooke, who seemed to be most desirous of great changes in the Constitution, after throwing the most serious imputations against it, had resorted to the Bill of Rights as the consummation of human wisdom, and insisted upon the observance of the rules there laid down by the present Convention, particularly the first three articles; and some of them have also called to their aid the 15th article, with the practical commentary upon them in the Constitution itself; and the gentleman from Brooke, had gone so far as to assert that in demanding a free white basis of representation, he demanded nothing new under the sun. It was the slave-holding minority, who were demanding a new thing under the sun. The following are the gentleman's own words: "He, (Mr. Doddridge) therefore, concluded that, in demanding a free white basis of representation, he and those who acted with him, were asking no new thing under the sun; but were forwarding a principle already existing and recognized; principles deeply founded in the nature and necessities of society. It was the slave-holding minority who were demanding a new thing." Here the gentleman admits that he is demanding something, and that thing, a change; he yet denies that this change is a new thing under the sun, and proceeds to charge the slave-holders with demanding a new thing under the sun, whilst they demand nothing at all, under the sun, neither new nor old, but are perfectly content with the Constitution in that respect as it now stands. Mr. G. said, he was willing to be governed by the Bill of Rights according to his interpretation of it. The Bill of Rights detracted nothing from the Constitution by preceding it, and he deemed it an essential part of the Constitution. Permit me, said Mr. Giles, to turn to the sections to which gentlemen invited our attention. The first article is:

"That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The eloquent and learned gentleman from Loudoun, read to us a number of Constitutions, and particularly that of Massachusetts, in the formation of which he told us, the Convention sat in deliberation for months.

He (Mr. G.) had already read the first article of the Virginia Bill of Rights. Let us look at the comparative merits of the Bill of Rights of Virginia and Massachusetts. The first article of the Massachusetts Bill of Rights says, that "all men are *born* free and equal." He denied this to be true, either in law or in fact; while he agreed that "all men are by *nature* equally free and independent." The condition of man, from free to bond, or from bond to free, is changed by municipal or conventional, and recognized by international law. Slaves are born slaves before us every day, which directly disproves the assertion, that "all men are *born* free and equal." Yet the Constitution of Massachusetts unequivocally asserts, that all men are born equally free. Are slaves born free? No. And if an enquiry be made as to the means, by which their condition is changed, the answer is, by municipal law—by conventional law—by force—or by conquest. Upon what authority do we hold Africans in bondage? Surely, by the municipal laws of that country, recognized by international law. Slavery was not only recognized by international law, but it was acknowledged by the law of God, if the scriptures may be deemed sufficient evidence of that law. As to matter of fact and of law, directly the reverse of the declaration in the Massachusetts Bill of Rights, is the universal legal maxim, "*partus sequitur ventrem*"—the offspring follows the condition of the mother.

This Constitution is presented to us as a model of excellence for our imitation, which declares that the bond are not born bond, which is not true—in preference to our own, which asserts the truth, that "all men are by nature free." And this strange preference has been strangely attributed to a greater degree of deliberation in the one case than in the other. He observed that this clause in the Bill of Rights contained another important declaration, that man possesses the means of "acquiring and possessing property" in a state of nature, thereby clearly sanctioning the existence of such a state. The second section is in the following words:

"That all power is vested in, and consequently derived from, the people; that Magistrates are their trustees and servants, and at all times amenable to them."

This section contains the great declaratory principle in direct hostility to the basis upon which all pre-existing Governments were founded; that "all power is derived from the people"—and that Magistrates are the servants of the people—and affords the first great example of reducing that principle to use in the affairs of mankind. It meets my most hearty approbation, and exalted admiration. The third section is:

"That Government is, or ought to be, instituted for the common benefit, protection and security, of the people, nation, or community: of all the various modes and forms of Government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-

administration; and that, when any Government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."

His worthy colleague, (Mr. Leigh) had so fully explained his views on one branch of this subject, and particularly on the clause, omitted by the gentleman who had introduced this section, that he considered all repetition superfluous. This section clearly proves that conditions are imposed upon majorities. His colleague had pointed out one, he would point out another. Whilst the majority have a right to alter, reform, or abolish the Government, there is no right conferred on them to do so, according to their own unlimited, capricious will. An obligation is imposed upon them, to act "in such manner as shall be judged most conducive to the public weal." This is the very business we are now engaged in performing—"to alter, amend, or abolish the Constitution, in such manner, as we shall judge most conducive to the public weal." Surely we should feel ourselves restrained by this clause from injuring, or even putting at hazard, any local or particular interest, even should it be the interest of the minority. Mr. G. called the attention of the Committee to that clause in the Bill of Rights, which required a permanent attachment to the community, as a qualification for voting, and asserted that the word 'permanent' was introduced with reference exclusively to land, nothing being deemed permanent but land; and the provision in the Constitution, which requires, that the Right of Suffrage should remain as it then was—being the freehold Right of Suffrage, was the practical commentary of the framers of our Constitution, upon the word 'permanent' in the Bill of Rights. This demonstrably proves that there is no discrepancy whatever between the two instruments.

Some gentlemen plumed themselves upon a notion that our forefathers had earnestly invited us to a frequent recurrence to fundamental principles, with a view, as they suppose, to change those principles. This notion they had derived from the 15th section, in the following words:

"That no free Government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles."

Why recur to fundamental principles? If these principles were true at that time, they are true now. Fundamental principles are eternal and unchangeable. Could our forefathers invite us to recur to fundamental principles, for the purpose of changing unchangeable things? But, if this were not the object, what could the object be for inviting a frequent recurrence to fundamental principles? Evidently for the purpose of watching the proceedings of the practical Government, and to draw them back from their aberrations, if any they had committed, to these great fundamental principles. It was not his intention to have referred to the General Government, if it had been possible to avoid it, notwithstanding its intimate connection with the State Governments, and its even constituting a part of them. But he found it impossible to avoid it. It would be all important, if we could prevail on that Government to recur to fundamental principles. Such had been its monstrous aberrations from the fundamental principles of the Federal Constitution, that they were violated every day. Scarce a semblance of its most important, original features remained. After he had been absent from the Government for some time, when he returned to it, he was astonished at the new-fangled nomenclature, which was introduced in substitution of the old Governmental phraseology; one effect of which was a splendid Government which the people are made to feel. How important then, would it be, could we prevail on this Government to have recurrence to original, fundamental principles. Instead of a splendid Government, which the people are now made to feel, we should then have a happy Government which they could not feel. He feared he had detained the Committee very unprofitably in presenting to their view mere general propositions without any attempt at minute, logical demonstrations. Those he left to the intelligence of the Committee. He would now examine some points of difference between himself and other gentlemen more especially, and as far as possible, would avoid repetitions. He would come to consider the actual difference of local interests as regards the slave population. The point is, whether there shall be any special provision for this local interest.

Mr. Giles was proceeding to remark on the argument of the gentleman from Loudoun, (Mr. Mercer) with respect to the salt-works of New York, and to deduce from it a confirmation of the views of the gentleman from Orange, (Mr. P. P. Barbour) with respect to those cases where a minority governs a majority; when

Mr. Taylor (of Chesterfield) rose, and moved that the Committee rise, in order to give his colleague another opportunity of presenting his views to the Committee, which, as he was then considerably fatigued, he could do more to his satisfaction and ease.

Mr. Giles expressed his willingness to proceed, although he was much exhausted, rather than protract the business of the Committee. He was willing to strain every power, physical and mental, he possessed, to continue his remarks.

The motion that the Committee rise was then put and carried, and the Convention adjourned.

TUESDAY, NOVEMBER 10, 1829.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Sykes of the Methodist Church.

According to the standing order, the House went into Committee of the Whole, Mr. Powell in the Chair.

Mr. GILES then rose in continuation of his remarks. He said, that he had never, at any period of his life, been in the habit of complaining, and as little now as ever, but it was only common justice to himself to state that he had risen yesterday, under a sense of debility so paralyzing, that he feared he would not be able to controul the operations of his own mind, nor to command that portion of physical strength which was requisite to sustain him through the task he had before him. This naturally produced some delay and confusion both in his manner, and in the course which he had prescribed for his own government. When he first rose, he had intended to read several extracts, but soon found himself compelled to change that determination, and to avoid reading as much as possible; being aware that reading tends much more to debilitate, than even the effort of speaking. He had intended to have read some of those extracts in relation to the first point which he had yesterday brought into discussion: he alluded to the remarks which had fallen from the venerable gentleman from Loudoun (Mr. Monroe) respecting the emancipation of slaves. This was a subject of such peculiar delicacy, that it was proper to present to the Committee the character of the existing relations, in respect to jurisdiction over slaves between the General and State Governments. He thought it proper now to complete what he had yesterday intended.

The General Government, at all times, from the first Congress, had disclaimed all sort of jurisdiction over the emancipation or the management of slaves; and thus jurisdiction, in both cases, was peremptorily denied to the General Government. He intended to have introduced the Journal of the twenty-first session first Congress, but as it was not before him, he would state from his recollection, what the resolution contained in the Journal upon that point was. The resolution went to disclaim on the part of the General Government, all jurisdiction over the emancipation or treatment of slaves. This resolution was entered on the Journal, as declaratory at that time, of the true interpretation of the Constitution; and at that day such an excitement existed among the Southern members against having the subject even mentioned, that they voted against this declaratory resolution. The honorable and venerable gentleman who is a member of this Convention, and who was then a member of Congress, he meant the gentleman from Orange, voted decidedly in favor of it. This was the mere declaratory act of one House; but in consequence of it two bills were passed, either at that or at some subsequent session, prohibiting the citizens of the United States from interfering with the slave trade, for the purpose of supplying foreign nations with slaves.

Mr. G. then referred to a memorial, which was presented to Congress by the representatives of several societies of Quakers. He happened to be a member of the Committee, to whom the subject was referred. He had relied on the declaratory resolution, in the negotiation which he had to carry on with the Quakers. All the Committee were, in principle, in favor of the measure; but it was his duty to satisfy these persons, that Congress had no right to interfere with the subject of slavery at all. He was fortunate enough to satisfy the Quakers, and they agreed, that if Congress would pass a law, to prohibit the citizens of the United States from supplying foreign nations with slaves, they would pledge themselves and the respective societies they represented, never again to trouble Congress on the subject. The law did pass, and the Quakers adhered to their agreement. He did not know whether or not the documents, on the subject of this negotiation, were still in existence; but he believed they had been filed away with other papers.

Subsequently, an Act was passed, prohibiting the introduction of slaves into the United States, in which this principle was again touched, in a more specific, but a different form. It was again his fortune to be on the Committee to whom that subject was referred, and he drew up two provisos to a bill then pending before Congress, for prohibiting the introduction of slaves into the United States after the year 1807; the object of which, was to draw a distinct line of demarcation, between the powers

of Congress, for prohibiting the introduction of slaves in the United States, and those of the individual States and territories. It was then decided, by an unanimous vote, that when slaves were brought within the limits of any State, the power of Congress over them ceased, and the power of the State began, the moment they became within those limits. He would beg leave to refer to these provisos. He would read as little as possible; but recent events made it important to revive the recollection of these facts, which appear strangely to have been forgotten. He had drawn up these provisos with all imaginable care.

The first proviso, after the powers of Congress to a certain extent had been declared, and the words therein were critically examined—and, indeed, he might say, not only every word, but every syllable, and even every stop, by the best talents which Congress could afford, be found—proceeded thus: “And neither the importer, nor any person, or persons, claiming from, or under him, shall hold any right or title whatever, to any negro, mulatto, or person of colour, nor to the service or labour thereof, who may be imported, or brought into the United States, or territories, in violation of this law; but the same shall remain subject to any regulations, not contravening the provisions of this Act, which the Legislatures of the several States or territories, at any time hereafter, may make, for disposing of any such negro, mulatto, or person of colour.”

This was then considered as a legislative interpretation of the Constitution, as may be seen by its phraseology. It disclaimed all power over slavery, in all time to come. But it did not stop there. The power was not only relinquished to the States, but also to the territories, to wit: the unlimited jurisdiction over all the slaves brought within their limits respectively.

The second proviso is in the following terms: “Provided, that the aforesaid forfeiture, shall not extend to the seller, or purchaser, of any negro, mulatto, or person of colour, who may be sold, or disposed of, in virtue of any regulation which may hereafter be made, by any of the Legislatures of the several States, in that respect, in pursuance of this Act, and the Constitution of the United States.”

Here, then, in these declaratory provisions of the Act, there is an explicit demarcation of the boundary line between the power of Congress, and of the Legislatures of the several States and territories. The Committee would observe that the word “territories” was omitted in the last proviso. An abstract right is admitted to the territories in the first proviso, but the word territories was not used in the second proviso, Congress having had a revisory power over the laws of the territories, and were unwilling to yield that power. The word was therefore omitted, but the right in the territories was recognized to exercise exclusive power over slaves, within their limits. He had understood that the Legislature of South Carolina, passed a law on the subject, and the State of Georgia assumed similar jurisdiction, in consequence of this law of Congress. This had led to two results—first, the admission on the part of Congress, that the State Governments are vested with the authority to declare persons within their limits, slaves; and second, the exercise of that authority, by the State Governments.

This brought him to the consideration of the proceedings which have lately taken place in the State of Ohio, and which had been very properly referred to by several gentlemen in this debate. It appears that Ohio, acting under a mistaken zeal, amounting to a fanatic desire, to meliorate the evils of slavery, invited a number of those unfortunate persons to take refuge in that State. Some remarks appeared in the newspapers, some years since, in regard to the State of Ohio, in which was suggested the possibility that in some future capricious mood, she might convert the coloured persons, who had been induced to enter her limits, into slaves, and that this she might do, because Congress had no right to prevent it. The remarks to which he referred, were as follow:

“Again, suppose Congress even could constitutionally exercise such power, would it be wise, or desirable that it should do so? when the effect would be, to place the different States in the Union upon different footings, as to rights? Nay, as to the most important right, with which the original States are invested? That is, the right of jurisdiction over persons within its own limits. This inquiry may be extended further. Suppose any of the free States, self-called, Ohio for instance, in some capricious mood, should determine that all the coloured people, who have been invited to take refuge in that State, against the slavery of other States, should be slaves within that State; would the Federal Government have the right to exercise any control over such determination? Certainly not—the jurisdiction over persons within the limits of Ohio, being exclusively with the State authorities. Here, then, Ohio would be invested with the power of jurisdiction over persons within its limits, which would be denied to another State admitted to the Union, subject to the bargained condition. Such are always the consequences of substituting bargains for principles in legislation.”

What has Ohio now done? Becoming perfectly sensible of the mischiefs which have resulted from her former fanaticism, she has passed a law, which, if carried into execution, must entail upon those unfortunate and deluded people, who came into her State, in the belief that they should find protection there, a greater evil than slavery itself. The mischief has arrived at such a pitch, that the State has passed a law, requiring that all coloured persons in the State, should give security for their good behaviour, to an amount beyond their means to obtain. And not being able to do this, they must either be incarcerated, or quit the State. No asylum is provided for them, but if the law should be carried into effect, they must be driven forth—find refuge where they can—perhaps in Virginia; and surely Virginia ought to be upon the alert to counteract this most probable effect of the law. The next step which Ohio may take, may be to declare those people slaves, and it is more likely now that she should do so, than it was when the preceding remarks were made, that she should now take this step, which is more onerous and disastrous to her invited guests than slavery itself. It is, indeed, strange, that these coloured people should have been invited into that State, and should now be driven abroad as vagabonds, not on the face of the earth, but to find their way to the clouds, if they can, or wherever else they could find a refuge. He mentioned this subject to show how scrupulous the States ought to be, in touching the subject of slavery, and particularly of emancipation.

There was another point, which he was compelled yesterday to omit, having then been nearly exhausted. It was the difference between the rights of the majority, claimed from the various misconceived sources, to which gentlemen had referred, and such as were given by the Constitution or Social Compact. The specific question before us, is, not what relates to the powers of the majority, nor who shall be the majority; but who shall be the constituents to make that majority. The question now is, who are to be the constituents? By whose votes a majority of the members forming the practical Government, is to be created? And, then, what degree of jurisdiction should this majority have? This must depend on the Social Compact, or written Constitution we are now engaged in forming; and that brought him to the real point of inquiry, as contained in the Bill of Rights. In determining who shall be the constituents, the rule he had agreed to observe, which he still agreed to observe, and which he hoped all gentlemen would observe, is, that these constituents are to be made, "in such manner as shall be judged most conducive to the public weal." The rule imposed on us, is to perfect the great work now before us, in such manner as may be most conducive to the public weal. He had now arrived at the point at which he left off yesterday.

He would now consider the actual, local differences, arising from the unequal, sectional divisions of our slave property. The question which has arisen, is, whether slaves ought to be counted, in forming the basis of representation, either as persons or property? It is a plain question, if we agree as to the objects of the formation of Government. Why should they not be counted? They are persons and property both. Because they are property, shall we divest them of their existence—of their personal character? They are both persons and property in law and in fact. He did not state this with such positiveness, because he pretended to claim any superiority for his own opinions. Far from it. He would present to the Committee the few grounds on which his opinion rests, and leave them to decide. He would point out some of the supposed aberrations of the gentlemen on the other side. The fact, that they are property, is authorised by the federal law, the laws of the State, international law, and the sanctions of all laws. Great Britain may be referred to on this subject, on account of the peculiarity of her policy in that respect. She is so fastidious in her ideas of the relation of master and slave, that the moment they touch British ground, in that relation, such relation between them is entirely cut asunder. Where then shall we look for the British sanction of slavery? We found it first here—we found the curse upon us, for a curse he must consider it. It is admitted that we cannot avoid it. That very nation which is so fastidious on the subject of slavery in British land, fixed it on us against our consent. She has lately, in a treaty with this country, admitted slaves to be property, and has paid for them as such, and thus she has again admitted the principle of slavery. Look first at her West India possessions. Slavery is there, in its essence. The condition of the slave there is miserable in comparison with what it is here. There is abundant evidence around us to prove that we are making the best use of our power, to meliorate the condition of slaves.

He here begged to correct an aberration of the gentleman from Loudoun (Mr. Mercer,) as he conceived it to be. That gentleman had laid it down positively, that a slave in Virginia had no civil rights—that he was property—mere property. He compared him even to cattle. He presumed, however, that that gentleman would admit the existence of laws which treat slaves as persons: protecting them as far as wrongs are committed on persons in the character of persons, and consequently that slaves have civil rights. All persons, whether they be bond or free, not even excepting the *master himself*, who commit the higher order of wrongs, such as murder, &c.

on slaves, are subject to the punishment of death. The distinction on which this law is founded, is, that the offence is committed on them in the character of persons, and on the cattle in the character of property. The law in minor cases, for wrongs done to slaves, punishes through the master. As to the civil personal rights of the slave, they are more strictly enforced here than those of the white population. The protection which they receive under the law is most efficacious. The gentleman from Loudoun then, was in error. If rich or poor, white or black, murder a slave, death is the punishment. Did gentlemen ever hear of punishment of death for killing a cow? No, not even if the murderer eat her afterwards; yet these are the analogies of the gentleman from Loudoun.

He would say, that the laws in relation to slaves are wise and just. The law requires that the record of every offence charged against a slave, for which a white man would be punished in the Penitentiary, shall be laid before the Executive, for its decision: thus submitting by mere act of law, the case of every slave, found guilty of a criminal act, to the pardoning power. According to the humane provision of the law, the slave enjoys privileges which are not allowed to any one else. The best counsel is provided for him by his master, or by the Court, if the master should fail, and his rights are protected with the utmost vigilance and care. If we look at the police records of London, we shall see that thousands are hung in that city with almost as little ceremony as if they were brutes. Under this view, then, as the laws recognize the civil rights of bond as well as free, why are slaves not to be counted? The fact is, that whether persons or property, their labour produces a third of the taxes of the State. He cared not in what character the slaves produced them. The practical result, whether counted as persons or property, is nearly the same. But here is a case in point, of the unequal taxation of an important interest which requires some provision in the Constitution. Gentlemen admit there should be some provision, and offer a guarantee against the principle which they desire to insert in the Constitution. What is the object in establishing the fundamental laws? It is to draw from nature, certain great general principles, for the government of society, producing good moral tendencies, through their own intrinsic operations. According to the wise or unwise selection of these principles, would moral or immoral tendencies be produced in society. If we selected principles conducive to the public weal, the effect is visible, in the moral organization which the community gradually assumes. If the contrary, the effect is disclosed in their corrupt tendencies. It is then manifestly our duty, to select principles, which would intrinsically produce good and not evil tendencies upon society. He would here remark, that the condition of the population of Virginia, is now believed to be as sound as that of any other country in the world, because the great principles which our forefathers selected, had continued to produce good moral tendencies from that time to the present—a period of more than 54 years. Is there any wonder then, in our present moral condition? What are the consequences of the want of good principles in other communities, but the existence of immoral tendencies in their fundamental laws. It is a conclusive proof that gentlemen on the other side, are selecting principles, which have bad tendencies, that they are providing remedies against those very tendencies. This reminded him of a silly fellow who insisted upon making himself sick, merely for the purpose of ascertaining, whether physic would kill or cure him, when it was more likely to kill than cure him.

He had paid every attention to the pathetic complaints, which had been made by gentlemen on the other side, but more particularly to those of the gentleman from Hampshire, (Mr. Naylor) to whom he had listened with peculiar delight, not only on account of the eloquence, but the philanthropy which pervaded the whole of his remarks. That gentleman had called upon us for justice to the people of the West. Mr. G. said, could he see the injustice complained of, he would obey the call with pleasure. But he could not see any analogy in the cases, which it was said called for the exercise of this act of justice. The complaint is, that the people East of the Ridge demand protection for their property, and, at the same time, refuse protection to the persons of those West of the Ridge. This, in the first place, is not the case; for the exclusion of persons, which is demanded for the protection of property, applies equally to the East and to the West. There is no analogy, however, in the two cases. The Eastern people have persons as well as property to protect. The Western, persons only, so far as the exclusion is intended to go—and the exclusion of persons is the same both on the West and the East side of the Ridge. The Eastern people have as much interest to protect person as property. The Penal laws are the same and must always be the same on both sides of the Ridge. The Western people, who had no property to protect, and into whose hands it was now proposed to place the power of protection, were not only not interested in affording, but were interested in depriving property of that protection. They would be aided too, in doing this without injury to themselves, by the difference in the kinds of property on this and the other side of the Ridge—and particularly the great disproportion in the slaves

He asserted, that on the formation of the social compact there were two parties—the governors and the governed, and that the conditions of the compact, were formed upon the principle of the *quid pro quo*. The governed give up a portion of their rights to be compensated for, by the protection of other rights to be afforded by the Government. There was then a stipulated obligation on the part of the Government to protect property, and there was a greater difficulty in complying with this obligation than in the protection of persons. The gentlemen admit both these obligations. No one would deny them. Is not the Government bound therefore, on this principle of *quid pro quo*, in return for property given up to protect the residue? This admission seemed to him to settle the question absolutely. What are we now doing? We are about to constitute an agent to protect both person and property. Here are two interests. The great object is to protect both. Would it be wise to choose an agent who had an interest in protecting both or one only? Surely all the world would agree, that he ought to have an interest in protecting both, and not one only. Here another question is presented. A great deal has been said about the protection of wealth, a term which seems to have been substituted for property. Property *in se*, is not wealth. It is property, in large masses, which constitutes wealth. Property in small portions is not wealth; and no one has ever insinuated or thought of affording more protection to large than to small portions of property. Hence, the poor man's property is to be as much protected as the rich man's. It is property which is to be protected then—whether in large or small portions, and not wealth—the property of the poor as well as of the rich; and the property of the poor in this country is vastly more extensive than that of the rich. And the protection of property indiscriminately, would strip the argument of the protection of wealth, by higher sanctions never thought of, of all its terrors.

Several gentlemen, and particularly the gentleman from Frederick (Mr. Cooke) most earnestly invites us to place the protection of our property, on the morals of the people West of the Ridge, and not on their interests. Will the gentlemen return the compliment to their brethren East of the Ridge, and place their protection on our morals? If so, we are then to act upon the principle, that we are all moral—"all honorable men"—disregarding altogether the selfish notions of interest. If this be really the case, he would respectfully ask these gentlemen what would be the use of Government at all? Government is not intended for moral, honorable men; but as a protection against the vices and imperfections of man; and if man were totally exempt from all vices and imperfections, there would be no necessity for Government at all. It was strange to him that gentlemen did not see, that this was a new emanation of the French philosophy of the perfectibility of man; and that if adopted here, would be attended with the same results which attended it in France. It failed in France, and will fail in every other country in which it may be tried, simply, because it is founded in a false, though flattering hypothesis. The notion of the perfectibility of man affords the most flatteringunction to his vanity, but unfortunately for him it has no real existence, and is nothing more than a mischievous, delusive vision of the mind. The gentlemen, in support of this fallacious doctrine, refer us to the liberality of the slaveholders on the East side of the Ridge towards the non-slaveholders on the West, as an example in point, in favor of his proposition. It is true Virginia was thus liberal in that particular case, and is always liberal. She gave up her western lands, sufficient to form an extended empire in themselves. She was liberal to Kentucky; and she has ever been liberal, in her intercourse with her sister States. Whence the causes of this celebrity of Virginia liberality? Surely, from the moral tendencies of her fundamental laws for fifty-four years. They teach her that it is to her interest to be liberal, and that honesty is the best policy for nations. Could there be higher compliments to the wisdom of the fundamental laws of Virginia than are contained in these demonstrations? He begged to call the attention of the Convention to an example, forming an awful contrast to the one presented by the gentleman. It was furnished by the Federal Government. An excessive tax has been imposed by that Government, as he conceived, in direct violation of morals, principles, and the plainest provisions of our written Constitution. It originated in combinations of particular sections of country to tax other sections. These combinations were effected by invitations given by certain political fanatics to other fanatics, to meet in Convention, at Harrisburg, during the recess of Congress; excluding all the sections of country intended to be made tributary from these invitations. Virginia was not honored with an invitation, nor any State South or South-West of Virginia. This Convention, thus composed, unblushingly met at Harrisburg in open day; organized themselves into a Convention, with all the assumed honors and formalities awarded to this Convention; and there laid the foundation of the Tariff Act which was subsequently sanctioned by an Act of Congress. This Act was passed in direct violation of every principle of taxation heretofore held sacred, and was addressed to the worst passions of the human heart. It was dictated by a spirit of electioneering and of avarice, which reckless of all principle, invited the manufacturer to rely upon

the labor of others, instead of his own labor, not only for support, but even for the accumulation of wealth; and actually furnished him with means, of taking the proceeds of the labor of another, which, if done without the sanction of this iniquitous Act, would amount to a criminal offence. The effect of this Act has been to demoralize the whole country, and to impoverish the whole of the tributary parts of it. It has taken from his own pocket every current dollar he possessed; and would go on to prevent him from ever re-possessing another. Nor is there any hope for any relief against this unprincipled imposition, so long as this baneful, electioneering spirit shall continue to direct our councils. It is the most unrelenting spirit, and, instead of our hoping for relaxation, it is constantly in search of some little modicum of property remaining untaxed for the tax of the next year. (*See note at the end.*) Such are the effects of the unprincipled measures recommended by this fanatical Convention at Harrisburg; which, after usurping all the powers of an authorised Convention, kept a regular journal of their proceedings, and after their adjournment, officially forwarded him a copy thereof. Now, he would ask all men, above and below the mountains—all christians—all lovers of right and haters of evil, to determine whether such proceedings can, or ought to be tolerated? If so, how deplorable is our condition below the mountains! The General Government first plunders us under a pretext of protecting manufactures, of every dollar within their reach; and then our trans-mountain brethren gravely ask us to trust the residue, if there be any, to their morals. The gentlemen then charge Virginia with impoverishment and degradation, and seem to intimate that both have arisen from the imperfections of our organic laws. It is true that Virginia is impoverished, but not degraded. Is that impoverishment confined to Virginia, or does it not extend to South Carolina, and the whole of the tributary scene of country? If so, then the extravagant impositions under the Tariff Act, must be the true cause of that impoverishment: Not the supposed imperfections of the organic laws of Virginia. They have moral tendencies which never could produce impoverishment. The bankruptcy of Virginia, is in *cash*—not in morals, nor in principles. Amidst all her misfortunes and impoverishment, she stands now as erect and distinguished in morals and in principles, as she has ever done at any former time. The true cause, then, of the bankruptcy of Virginia *in cash*, is the Tariff Act. This plunders all our *cash*, and that being taken away, impoverishment is the necessary consequence. Here, then, is a direct and immediate cause for this deplorable effect, without resorting to imputations against our fundamental laws as the cause of it: The attributable cause having no affinity nor relationship to the effect suggested to be produced by it.

We here have to encounter another pathetic appeal to our feelings. Several gentlemen, and particularly the learned gentleman from Loudoun, (Mr. Mercer) whose absence he regretted, had urged with great earnestness, claims for military services, rendered during the late war, by our brethren of the West. The absent gentleman drew in the most vivid colours these patriotic services—exhibited so much sensibility and exhausted so much time on the occasion, as to satisfy every hearer, that he must himself have been an honorable partaker in the scene. But Mr. G. hardly expected that he would have exhausted so much declamation in eulogiums upon the patriotism and heroism of these defenders of their country, because this tribunal was the last in the world to whose *feelings* appeals of any kind should be made. No, Sir; ours is the severe duty to search for principles, and not to indulge our feelings. There was no member of the Committee, more ready than himself, to do ample justice to the heroism and patriotism of the soldiers of the West on that occasion. But he could see no affinity, whatever, between those feelings, and the claims so pathetically urged by the gentleman, for extending to them the right of suffrage, or any other civil right whatever. To ascertain this point, it would be necessary to resort to first principles. It would be observed, that from the origin of society to the present time, some of its members possessed physical powers, and others possessed money. It is the duty of those who possess the physical power, to defend the society by arms. It is the duty of those who have money, to pay their defenders full compensation for their services. The militia laws are the arbiters between those who fight and those who pay. In the present case, our brave and patriotic defenders were fully paid, and when that was done, there was an end of all obligation between the parties. If they have not yet received compensation enough—in the name of God, give them more. It must be presumed that they have received enough, because there is no grumbling upon that score. But the great objection to this principle is, the intermixture of civil and military rights. What would be the effect of placing military claims for services at the fountain of all power? It would be to subvert the order of the civil and military authorities—making the civil subordinate to the military, instead of the military subordinate to the civil authority; and thus, with a mere scrape of a pen, convert a free, republican Government, into a military, despotic one. Pay, then, the military in land, in money, in military honors, in gratitude, in love, if you please; but for God's sake, never pay them in your civil nor religious rights. But keep forever military

and civil rights separate and distinct from each other. Some gentlemen have most gravely and seriously complained that we withhold their rights from them. He should be glad to know what rights they mean. He would be happy to hear what rights they are. He knows of none—nor has he heard any described. The only right, which he conceived the gentleman could allude to, is the *right to do wrong*. They call upon us to surrender to them the power of taxing a species of our property without taxing their own. To do so would be a *wrong*, not a *right*—certainly not a *right* included in his system of ethics. They complain of our refusing them their natural right of suffrage. They say it is cruel to deprive the poor of their natural right of voting. Yet, in the next breath, they, themselves, exclude more than half the nation from the exercise of the same right. They must necessarily carry the right to its whole extent, or abandon it altogether; otherwise they would be guilty of the most evident inconsistency in their own doctrines. Let a case be put including a youth of twenty-one years of age, according to their rule, and excluding one of twenty. Let the youth of twenty take up the memorial recently presented to us—written with great ability and eloquence—and read it to the youth of twenty-one included within the rule, which arbitrarily excludes himself; and then address him as follows: “I am a much smarter fellow than you are. I can out-read you—out-write you, and out-cipher you. I can out-run you—out-jump you—throw you down, and whip you after you get up. In the point of the fashionable consumption of the qualifications for a voter, such is the thickness of my pericranium, that I can drink a quart of whiskey to your pint, and give a better vote than you can afterwards. Is it not cruel, then, that one so highly gifted for a voter as myself, should be excluded by a rule of right, which includes such a booby as you are?” What reply could be made to so just and pathetic complaint? Certainly none, if the rule be right. This would prove incontestably, that all claims grounded on natural rights must be abandoned, and that we must act upon expediency alone. That we must observe the injunction of the Bill of Rights to extend the right of suffrage in such manner only, as we shall judge most conducive to the public weal, and to those only, who shall possess sufficient evidence of a common, *permanent* attachment to the community.

Mr. G. said, he was now approaching a point in the debate, which filled him with pain and regret; because he could not avoid seeing in it some departure from that spirit of decorum, as well as of confidence and affection, which had heretofore characterised the debate. He alluded to certain observations made by the gentleman from Brooke, (Mr. Doddridge) which he could not help construing into polite threats, from the influence of the physical power West of the Ridge. The language used by the gentleman, was not presented to us in the insulting terms of “war, pestilence and famine;” but it was equally intelligible, and to him not less repulsive. He had no intention of reciprocating either the spirit or language of these threats. God forbid that he should infuse one drop of bitterness into this debate! The first object of his heart was, to improve the spirit of conciliation and concession. Such language as “war, pestilence and famine,” had been heretofore banished from this Convention; and he thanked God for it. But can any other interpretation be put upon the following observations of the gentleman from Brooke, but polite threats of the physical force of the West against the East:

“How fatal, then, will be the effects, should you be guilty of misrule! You say, to be sure, that we are a minority: of the freeholders, perhaps we may be: but look at the votes given at the polls, where the true voice of the people of Virginia was heard; and it will appear, that while *you* represent 280,000 of that people, *we* represent 402,000 of them. I acknowledge that so vast an odds proves one thing, at least; it proves that heroic, moral boldness which inspires the gentlemen who are opposed to a new Constitution. It proves that they are as daring and firm, as I well know them to be upright and honorable.”

What is the meaning of this language? What is the meaning of presenting the odds between 402,000 whites on the West side of the Ridge, and 280,000 on the East? Why call upon us to exert heroic, moral boldness, in giving a vote upon the present question, agreeably to the dictates of our own conscience? He meant not to press this argument upon the minds of others, similarly circumstanced with himself. But he could not abandon the duty of stating its impressions upon his own mind. It would not be possible for him to surrender the power demanded under the influence of these threats, especially when the uses intended to be made of the physical power were openly avowed. Other gentlemen, similarly circumstanced, might do so; but in such case, their only reliance, so far as he could see, must be in the morals of our Western brethren, for the protection of their own interests and the interests of their constituents. If so, amiable may be the thought—philanthropic the intent—and generous the act, but deadly the mistake in his judgment to their own interests, and to the interests of their constituents—vain, indeed, he feared, would be this reliance.

If threats thus bold are to be presented to us, while the physical force of the West is restrained by the Constitution and the laws, with how much more force will they

assail us, when we shall yield up the Constitution at their bidding, and they shall have made the laws, under their own interpretation of it. In that case, instead of being restrained by a sacred respect for the Constitution and the laws, they will have both co-operating with the threatened physical force on their side. He should think, that these circumstances would present a most awful question, for the consideration of every member as well as of every individual inhabitant East of the Ridge. Whilst, however, he left other gentlemen to their own reflections, he would state with frankness, their effect on his own mind. He could never, for a moment, think of voting against his own conscientious convictions, under the influence of any threats whatever. So far from it, they would serve to fortify him in acting fully up to those convictions. He should vote, therefore, with more firmness, than if he had not been told, that there were 402,000 whites on the West side of the Ridge, who could be arrayed against 280,000 on the East side, at least as early as the year 1850; and even if he had doubted before, these threats, with the avowals they contained, would serve to dissipate those doubts, and fix more decidedly his impressions. The arguments of the gentleman, may have their full force upon those, who expect to reap a beneficial effect from that influence; but they could only be repulsive to him, who was threatened, as well as his own constituents, to be the victims of that influence. He could not avoid also, suggesting to the gentleman, although he did so with great reluctance, but in a spirit of good feelings, that these threats may serve to teach him two most important lessons. The first; that the people below the Ridge, will always be found to have as much of that "heroic, moral boldness," and to be as "daring and firm," as any occasion shall require. Second; that they will necessarily be driven, with however great reluctance, to the ascertainment, to the full extent of all their energies and capacities, fiscal and physical.

Mr. G. said, these reflections had naturally drawn his attention to some remarks made by the venerable gentleman from Loudoun, (Mr. Monroe) in relation to a probable separation of this State. That gentleman had earnestly admonished us of the danger of such separation, which was much enhanced by our divisions and collisions of opinion here. Surely, such danger must be visible to all, when they see this array of force presented against force; and surely all will admit that it is the first duty of the Convention to guard against an impending evil of so much magnitude. The mere comparisons of force against force, must be fraught with danger; particularly when a geographical line of demarcation is drawn between the parties placed in opposition to each other. He feared the danger was greater than was generally apprehended, and that the best mode of subduing it, would be to command our own passions, and to bring our own deliberations to harmonious results. The moment the suggestion of the separation of Virginia was made by the gentleman from Loudoun, it entered deeply into his own mind, and extended itself into a thousand ramifications, which he felt it impossible to trace in all their various bearings. He verily believed that more extensive consequences would result from that deplorable event, than could at once enter into the contemplation of any gentleman. Can any gentleman believe that the separation of Virginia would stop there? If there be really any one who thought so, he could not have devoted much reflection to the subject. The forcible separation of Virginia, must and will lead to a separation of the United States, come when it will. This would be the probable effect of the forcible separation of any State in the Union, but particularly so of Virginia, in consequence of her relations—and especially her geographical relations to the United States. Have we not awful indications of the probable separation of Virginia, not only from what is passing in this Hall, but also out of doors? What is going on in the country at this moment, from excitements produced by our debates here? An anxious and ardent spirit is seen to exist in the country generally; and the excitement in one district has displayed itself, in actually sending instructions to a distinguished member of this body.

Mr. G. said, that he saw from the newspapers, that the people of other districts were actually taking the business of this Convention into their own hands. He saw that a single vote given by two of the most venerable and distinguished members of this body (Messrs. Madison and Monroe) was calling for instructions from their respective districts. Could not every gentleman see in these extraordinary excitements and actual movements of the people, great danger of a separation, particularly where a geographical line of demarcation was already designated, for separating the combatants. No human being can foresee the extent of these excitements, nor the excesses to which they may be carried. We have already seen one honorable member of this body called upon under their influence to abandon his conscience or his seat, and who had actually abandoned his seat rather than his conscience. Mr. G. said, he was far from making these remarks, with a view of depriving the people of their unquestionable right of instructing their members on this floor. He thought it not only their unquestionable right, but their indispensable duty to do so, if they thought the magnitude of the occasion called for their interference; and he begged leave here to repeat an opinion which he had already expressed, that a division of this State neces-

sarily involved a division of the United States. In regard to the force held up *in terrorism*, he could only say, that whenever the awful occasion should arise for calling in force to settle collisions and divisions amongst ourselves, the destinies of this country will not be settled by the physical force on the West side of the Ridge, nor of the whole United States alone. No gentleman could have thought much upon this alarming subject, who would not perceive, that the physical force of the commercial nations of Europe, would settle the destinies of this country in that deprecated event. The mind, in contemplating consequences, could not avoid discerning, in a crisis so awful, that the great and splendid city of New York would have much more to dread than the city of Richmond; for the very existence of that great city depends upon contingencies beyond her own control; and, in the event of divisions and collisions amongst ourselves, would have more to dread than any other spot in the United States. Have gentlemen, employing these threats, ever contemplated the absolute certainty, that, in the event of divisions amongst ourselves, the future destinies of the United States must be determined by the physical force of foreign nations? And then extended their thoughts to the *douceurs* which they have to offer, for the purpose of obtaining such physical force? If they have not done so heretofore, they surely have omitted to perform a most essential and indispensable duty; and he begged now to be indulged in calling their best reflections to that important subject. If the people of Virginia could be so wild and so foolish, as to rush forward to a separation of the State, let the enquiry now be made, what *douceurs* have our transmontane brethren to offer for the physical force of the commercial nations of Europe? Nothing—literally *nothing*; whilst the people on the East side of the mountains, have the most attractive and influential *douceur* that could possibly be offered—commerce—the most valuable and seductive in the world. Commerce—consisting of the most suitable staples, which any part of the world can produce, for the commercial nations of Europe; and which may be given in exchange for their productions equally suited to our own wants. Hence our *douceurs* might consist of advantages, not sacrifices. Notwithstanding these convictions, and although he never had been in the habit of making professions of patriotism, or of the motives which govern his conduct, he would take this occasion to say, that he would deprecate a division of this State, or of the United States, as much as any gentleman in them. But he felt it his duty to speak of things as they are—things so irresistibly fixed, in the relation of nations, that neither himself, feeble as he was, however he might wish it, nor the whole power of this Convention—nor of the United States, could alter or avoid. The venerable gentleman from Loudoun, had expressed his doubts whether the Government of the United States would permit a division of this State, even were she to require it. He would respectfully ask, how could the Government of the United States prevent it? He knew that there was a clause in the Constitution which required the consent of Congress to the separation of any State in the Union. But when force is once brought into action, it puts at defiance all civil regulations whatever. (*Inter arma silent leges.*) Whenever this is the case, all our civil relations become changed, and we must look to force alone to give the law. In that case, he would respectfully ask gentlemen, how the General Government could prevent such a deprecated calamity, if it would? What means have they, which they could employ for such a purpose? Could it be prevented by degrading us still further by more Tariffs, or by physical force? These means would be feeble, aggravating and incompetent. He would again recur to the remark which he had before made, that the destinies of this country would not be settled by the physical force of this country alone; and whilst he looked at that circumstance with as much awe and regret as any gentleman on this floor, he could not shut his eyes to what was passing before them. Independently of the separation of this State, the General Government has already produced excitements enough in the country to hazard the Union, by the unprincipled and oppressive measures, which he had already mentioned. He saw in the newspapers that enquiries had already commenced, into the probable effects of the Tariff, Internal Improvements, and other usurpations of the General Government upon the Union of these States. Mr. G. said that he had seen some most able and eloquent dissertations, said to be written by one of the ablest statesmen and patriots in the United States, (he alluded to the Rev. Mr. Channing of Boston,) containing inquiries, into the probable separation of the Union, resulting from the various usurpations of the General Government, but particularly from the Tariff and Internal Improvement Acts. These causes he seemed to think were at least sufficient to hazard the integrity of the Union.

Mr. G. said, that he had gone into this course of reflection in the hope of attracting the reflections of others, and bringing about conciliation and harmony amongst ourselves, but he greatly feared that they would be utterly unavailing. He would now most respectfully ask gentlemen, seriously to reflect upon the best mode of avoiding our own embarrassments, and of relieving the country from existing alarms and difficulties. The best that had occurred to him, was, to banish as far as possible our own

dissentions, and to approach to unanimity in something—that we should banish our own passions and prepossessions, and calmly, coolly, and confidentially consult with each other, as to what could be done with a nearer approach to unanimity. He would warn gentlemen against the effects of carrying any question—especially one of great magnitude—by a lean majority. He thought nothing good could be gained by such a proceeding. The country never could be tranquillized so long as the people see that we have no confidence in our own measures—measures of so high a character as imperiously to demand both our own confidence and theirs. This redeeming spirit of harmony, of confidence, of conciliation and concession, should commence in this Hall. It is our imperious duty to be the first in making manifestations of this saving spirit here. Let us then, with a magnanimous disinterestedness and self-denial, set a noble example to our constituents, and thus tranquillize their passions and relieve their alarms. He would ask no more from other gentlemen, than he was disposed to yield himself. He sincerely wished to ascertain the propositions for amendment, which would command the confidence of the greatest majorities. He would himself agree to amendments, which he could not fully approve, provided gentlemen on the other side would make similar relaxations on their part. For the purposes of union and harmony, he was disposed to go to the utmost points which his conscience would permit; but he should deeply deprecate the adoption of any measure whatever, which would not command the confidence of a great majority. Less than that, he was perfectly convinced, would never relieve our present deplorable embarrassments.

There was one impression upon his mind, which he wished to impress upon the minds of others with peculiar emphasis. It was, that small changes could never produce a division of a State, whether produced by unanimity or not; whilst great changes would at least hazard such a result, unless unanimously adopted; or at least by a majority approaching to unanimity. Great changes made by an almost equal balance of opinion, are the best calculated to produce great hazards, and will necessarily do so, unless checked by an interposing Providence. In this stage of our business he had no specific propositions to offer. All he could do, was to throw out these ideas, and solemnly to pledge himself to indulge to the utmost, a spirit of conciliation and concession. He earnestly invited other gentlemen to turn their minds towards making propositions of conciliation, and in that case, pledged himself to do so, in the further progress of the business before the Convention. But, above all things, he begged to guard the Convention against the adoption of great changes by lean majorities; because, as he said at the beginning, it would only be a poor triumph of friends over friends, and could not possibly eventuate in any good result.

Mr. G. expressed his regret at having detained the Committee so long, and promised to close his remarks, with only two or three further reflections. It must occur to all, that the task of mere pulling down, is an easy one. Every booby, possessed of sufficient physical power, with a trowel in his hand, can take down every brick of the most solid, useful and magnificent building, erected upon the true principles of architectural science. But it requires thought, care, study and science, to build up one, which shall be durable, useful and ornamental, upon the same principles. Such a structure is now before us, wisely and fearlessly reared up for us, by our God-like forefathers, in the midst of imminent peril; and he feared, greatly feared, that every member of this Convention, with the best intentions, had brought here a trowel in his hand to take down his brick. He sincerely hoped better things; and should continue to do so, although hope, he feared, would be unavailing. He said, Mr. Chairman, is it possible that we can be content to become mere dilapidators, to tear down the most stupendous fabrick, which has proved the greatest blessing which God, in his infinite mercy, has bestowed upon us; and set up nothing better in its stead? And, Sir, ought we not to be scrupulously careful how we set up any thing, which would bear but a poor comparison with that which we have torn down? On the other hand, how honorable would it be to contribute our mite to sustain the noble institutions we have received from our forefathers:—to give them support, instead of dooming them to destruction. Suppose we do but little. We shall have done all that could be required of us—all that we conscientiously could do. We may, then, honorably return home with satisfaction to ourselves and to our constituents. Gentlemen have asked, and particularly the venerable gentleman from Londoun. (Mr. Monroe) emphatically asked—what is to be the effect of doing nothing? What is to be the effect of going home, without doing something? Aye, Sir, permit me to reiterate the question, what would be the effect of doing nothing? It surely would be a great deal better than doing mischief. But no one calculates on doing nothing. All are disposed to do something—to do a great deal. Let us then unite, Sir, and do all we can do with unanimity or some near approach to it. If we find nothing to do, we shall do a great deal by refusing to tear down this noble edifice. We can then go home with approving consciences, and tell our constituents, that after its having passed through the severest ordeal, we found our present Constitution better than we expected: that we had discovered some unthrifty scions: that we had applied the

pruning knife—cut them off—and put into their places grafts which would produce good fruits. He was satisfied that we could not discharge the great duties entrusted to us—nor satisfy our own consciences so well in any other way.

He hoped to be indulged in making another remark. Our wise, heroic, patriotic forefathers gave us this blessed Constitution. They framed it under the same feelings of zeal, and amidst the same honest differences of opinion which now exist amongst us. But *they* succeeded by compromising, and by sacrificing all their varied opinions and feelings upon the altar of patriotism and virtue. We are now called upon to examine and improve their great work. In performing this high and honourable task, let us recollect and imitate their exalted example.

Mr. G. said—Mr. Chairman, with pain and sorrow of heart, I speak it—these our God-like forefathers are now mouldering in a state of oblivion and forgetfulness. Their names are blotted out from our remembrance. Ought this, Sir, to be longer permitted? If so, would it not be to our shame, and ingratitude? But, Sir, it is neither. It is merely the effect of thoughtless inattention. Virginia was never ungrateful. Virginia never can be ungrateful so long as she is composed of Virginians. A stain may be cast upon her for forgetfulness—for inattention—but she is incapable of ingratitude. Why, then, should we suffer our venerated ancestors to sleep longer in oblivion? We have even permitted the greatest day in the political calendar, when under their influence, the great light of liberty first burst forth upon a benighted world, to be also lost in oblivion. Yes, Sir, that day, the 29th of June, has become merged in the 4th of July, which has been permitted to usurp all its own appropriate honours. Let it not, then, be longer said, that our noble forefathers rest in oblivion. Instead of tearing down the splendid structure they have raised, instead of letting them longer sleep in silence, let us call them from their tombs, and award them the highest posthumous honours. And here he begged to be permitted to renew a proposition he had once before made, to testify our sacred veneration for their memories; let us fill with their busts the vacant niches in this Hall. Let us fill with them all the niches in the whole Capitol; for there are worthies amongst them sufficiently numerous to fill the whole. Let us relieve ourselves from the sin of ingratitude, by taking them from their silent incarceration, and placing them where they will be seen and venerated by every true-hearted Virginian—by our posterity and by the whole world, to the end of time.

NOTE.—(*Accompanying Mr. Giles's Speech.*)

Extract from page 247, vol. 2, Raymond's Elements of Political Economy—"There is no part of the Statute Book, that requires such frequent revision as the Tariff Act, although we sometimes hear it said, that a tariff, should be permanent, and seldom if ever changed, but this is a great error. A year does not pass, in which the tariff upon some particular articles may not be raised with advantage. The most general rule on this subject is, that a tariff ought not to be reduced, although it may frequently require to be raised."

Again, page 248—"The reduction of a tariff is one of the harshest and most violent measures that a Government can possibly adopt."

Comment.

What an unblushing spirit of avarice is here displayed? The manufacturers, whose insatiable cupidity seems not satisfied with the extreme injustice of the present tariff, are still to be upon the watch, and every year some new addition is to be made to it. Every imported article is to be strictly watched, and if not already burdened to its highest pitch, is to be strained up annually a little higher, whilst "the reduction of a tariff is one of the harshest and most violent measures that a Government can possibly adopt." What elementary logic! What political morals! Every occasion is to be greedily seized upon, to add to the plunder of the proceeds of the labour of one man, and give them to another, who did not labour for them—but to cease from further plundering, is "one of the harshest and most violent measures that a Government can possibly adopt." Is this also the doctrine of the new political school? Is this doctrine to be honoured by the sanction of its future enactments? On the other hand, the writer contends—that the practical Government is now called upon by every motive that moral honesty, and by every principle, that the general welfare "can suggest to suspend this plunder, and to leave to every individual labourer, the proceeds of his own honest labours."

The rule laid down in the foregoing extracts of Raymond's Political Economy, has been scrupulously observed since the year 1824. New subjects for higher duties—or new duties have been hunted up and brought forth from that time to the present. What an encouragement of furtive propensities is this encouragement of manufactures? What a general corruption of morals? The manufacturer is authorized and

empowered by law to pick the pockets of his neighbour, and encouraged to sharpen his wits to increase his plunder, and to stop his plunder would be the essence of cruelty.*

Mr. Giles having resumed his seat, the Committee rose.

Mr. Venable observed, that it must be evident from the progress which had as yet been made in the business of the Convention, that there was no probability that it would get through its labors before the meeting of the Legislature. The present Hall did not present very convenient accommodation to those who were desirous of listening to the debates. They attended in numbers, not as he believed, from a vain curiosity, but from the deep interest very naturally felt in what was doing here; he, therefore, thought it was time that measures should be taken to provide some other place of meeting—with which view he offered the following resolution:

Resolved, That a Committee be appointed to enquire whether a convenient room can be obtained for the sitting of the Convention, should they judge it expedient to retire from the Legislative Hall, and report.

The question being taken, the resolution was rejected without a count; and thereupon, the House adjourned.

WEDNESDAY, NOVEMBER 11, 1820.

The Convention met at eleven o'clock, and its sitting was opened with prayer by the Rev. Mr. Horner of the Catholic Church.

On motion of Mr. P. P. Barbour, the House again went into Committee of the whole, Mr. Powell in the Chair, when,

Mr. JOHNSON rose and addressed the Committee as follows:

Mr. Chairman—The question under consideration, has occupied much time, in the discussion, and no doubt much more, in the deep deliberations of the Committee. Its great importance and exceeding delicacy, entitle it surely, to all the aid, which temper, forbearance, conciliation, free, frank and full interchange of opinion, laborious investigation and candid argument, can afford. It has on the one hand encouraged the most animated hopes, and, on the other, alarmed the most anxious fears. The whole country looks to it with intense interest—convinced that on its issue depends much of weal or woe.

We are engaged, Mr. Chairman, in a contest for power—disguise it as you will—call it a discussion of the rights of man, natural or social—call it an enquiry into political expediency—imagine yourself, if you please, presiding over a school of philosophers, discoursing on the doctrines of political law, for the instruction of mankind, and the improvement of all human institutions—bring the question to the test of principle, or of practical utility—still, Sir, all our metaphysical reasoning and our practical rules, all our scholastic learning and political wisdom, are but the arms employed in a contest, which involves the great and agitating question, whether the sceptre shall pass away from Judah, or a lawgiver from between her feet.

In this contest, I feel a peculiar interest—because I stand towards the parties in a relation of some delicacy. With the one, are my present residence, the land of my nativity, almost all the friends of my youth, and most of those to whom my affections are bound, by the ties of affinity and blood—With the other, are my property and my constituents—those who are endeared to me, by a residence among them of more than twenty years, by many a proof of recollected kindness and friendship, by gratitude for early patronage, and for political confidence, bestowed before it had been earned, and continued after every claim, I could have pretended to it, had been lost by my removal from them. In this state of divided allegiance I ought perhaps to have taken counsel from prudence, and have chosen the part of neutrality. But I had been long in the habit of considering both parties to this controversy as children of the same family, constituent and inseparable parts of the same community—somewhat diversified, it is true, in their possessions, their pursuits, their manners and their character, having some interests, perhaps not altogether in accordance—nevertheless identified in the leading characteristics of a plain agricultural, republican people, having the same great interests, and one common object, the integrity, freedom, happiness, and glory of a common country. I had long, too, cherished the fond, perhaps the delusive hope, that it was possible to reconcile all differences, to appease all angry feelings, to remove all causes of jealousy, and to unite all parts of the community in harmonious action, in common labor for the common weal; and to realize this hope, I had often exerted to the uttermost my humble power. I could not, therefore, at this most interesting crisis in public affairs, when heated, if not angry controversy

*See Appendix, for Mr. Giles' address to the Executive Committee, as prefatory to the foregoing speech.

was expected by all ; when serious, if not fatal dissension was feared by many ; when all might be lost by inattention or imprudence, or all might be saved by care and pains—I could not decline the honorable call to duty, from my old constituents. I could not refuse the trust, when, well knowing my opinion, they confided their great interests here in part to me, and left me at full liberty, without pledge and without instruction, to profit by the experience and wisdom of those around me, and following the dictates of my own judgment, to shape my course, with a single view to the public good.

After listening attentively to every thing that has been said—and much has been ably and eloquently said—I am satisfied, that by advocating the resolution of the Select Committee, and resisting the proposed amendment, I shall best discharge my duty to my constituents and my country.

Mr. Chairman : I am no friend to change—I have been no advocate for the call of this Convention. True, I have thought the old Constitution, in some respects, imperfect in theory, and defective in practice. I have thought its principal defect that very inequality in representation, which the resolution of the Select Committee proposes in part to remedy.

I thought it also a defect in the Constitution, that it contained no provision for a just apportionment of taxes, or just distribution of the burthens of the Government, among the people of the Commonwealth. I had been, for some years, a member of that branch of the Legislature, in which the inequality of representation was most glaring. I represented in the Senate, a district composed of six counties, in the Valley, containing then, perhaps, about one-eighth of the white population of the State, and I with only three others, represented the whole country West of the Blue Ridge, containing about one-third of the white population. I thought I perceived the injurious operation of this inequality. On questions of local concern, I had often seen the interests of the East arrayed against those of the West, and controversies thence arising, attended with much excitement, and sometimes with great asperity, and angry feeling. It had occasionally been my good fortune to interpose between the contending parties, and reconcile their differences. But I was satisfied that a settled discontent was arising, that jealousies were daily increasing, which threatened to foment discord, to alienate brother from brother, and to countenance the opinion, that there were important differences of interest in the different parts of the State, which the same Government would not equally protect. When the Western people complained, that they had not a just participation in the power of the Government, they were often reproached with their poverty, and almost always reminded, that they did not contribute their just proportion of its revenue. The Act of 1782, made for equalizing the land tax, had thrown the State into four great districts, the counties into four classes, and had fixed a standard, in each class, of the average value of the land per acre. The first class comprised all the tide-water counties, with several of the large midland counties, and the standard value of its lands per acre, was ten shillings;—the second class comprised the other midland counties, except Pittsylvania and Henry, and embraced the two Valley counties of Frederick and Berkeley, and its standard per acre was 7s. 6d.—the third contained Pittsylvania and Henry, with the Valley counties, not included in the second, and the standard value of its lands was 5s. 6d.—to the fourth belonged the trans-Alleghany counties, rated at the standard value of 3s. per acre. This standard, probably just and fair at the time when it was adopted, had in process of time become unjust, and operated injuriously. The relative value of land in the several districts had essentially changed ; those of the Western districts having risen, and approached much more nearly to equality with those of the Eastern. But the taxes continued to be imposed according to the same standard ; in consequence whereof, the tide-water district was unduly burthened, and the other districts, especially the third and fourth, paid less than they ought. These inequalities, in the imposition of taxes, and in the representation in the Senate, had been the subject of frequent discussion, and I was informed that several ineffectual attempts had been made to correct them, by an ordinary act of Legislation. These fruitless efforts served only to increase the general discontent, to inflame animosities, and by giving to the discontented a solid reason for objecting to the organization of the Government, enabled them with more success to seize on all occasions of public distress or popular excitement, and turn them to the purpose of rousing a spirit of heedless reform. Thus it happened, that in 1816, the people of the large districts being disappointed in some favorite measure, and much dissatisfied with the proceedings of the Legislature, were persuaded that they had been grossly injured ; that the cause of their wrongs was to be found in the unequal distribution of the power of the Government ; and that their remedy was to be sought in a general Convention to reform this, and many other fancied or real defects of the Constitution. Under the excitement of this occasion, that meeting in Staunton was held, which has been denominated the Staunton Convention. The county of Augusta did not participate in the feverish excitement which then prevailed, and while it was willing to seek by temperate and prudent measures, substantial relief from ac-

knowledgeed evils, it was unwilling to encounter the hazard of general reform. It therefore deputed to the meeting two members, of whom I was one, and charged them with the duty of endeavouring to infuse into the proceedings as much of temper and prudence as possible, and to restrain them to a respectful memorial, asking of the Legislature that proper measures might be adopted for organizing a Convention to amend the Constitution of the State, but with powers limited to the objects of equalizing the representation and taxes, and of providing under proper cautions, for future amendments. The deliberations of this meeting resulted in a memorial to the Legislature, asking a general Convention; and in a protest by a small minority, to which the Augusta deputies belonged, the object whereof was to limit the powers of the Convention to the three subjects which I have mentioned. The memorial and protest were laid before the Legislature at their session of 1815, and a bill passed the House of Delegates, providing that the sense of the people should be taken on the question, whether a Convention should be called, with powers limited to these three objects and one other only, the extension of the Right of Suffrage. This bill was amended in the Senate, so as to limit the powers of the Convention to taxes and representation only, and was laid on the table to await the coming of a bill then in progress, for reforming the Senatorial Districts, and for a re-assessment of the lands. This bill came to the Senate, and passed by a majority, I think, of one: the bill for the Convention having been rejected by a majority of two. Both were very obnoxious to the Eastern members, and were opposed by them: both were acceptable to me, and advocated by me. I preferred the Convention bill, because I thought it would give more adequate and more permanent relief; but when it was lost, I espoused the other, though its operation was inconvenient and harsh, and its relief temporary. The Convention bill was in truth, preferred to its rival, by a large majority of the Senate, and would have passed, but for one of those amusing incidents in legislation, by which false calculations of majorities sometimes cheat us of our votes. [Here Mr. J. related an anecdote, shewing that one of the Senators, being deceived in his calculations, had been induced to give a vote, which secured the passage of the bill, which he most desired to defeat.]

This bill reforming the districts upon the basis of white population as ascertained by the Census of 1810, gave to the country beyond the Blue Ridge, nine Senators. That country had then about its due share in the representation of the House of Delegates, upon the same basis; and an adequate provision was made, for a just apportionment of the taxes.

Believing that the Legislature would follow this precedent—would preserve something like a practical equality of representation, in both Houses, by occasional reforms of the Districts, and by the division of counties, I was content to submit to the remaining imperfections in the Constitution, rather than to put to hazard every thing valuable that it contained. I did think there was much in it, worth preserving. I thought it suited to our genius and character, calculated to protect our rights and promote our interests—taking it “all in all,” comparing it with every Constitution of which I had any knowledge, and especially with those which our extensive confederacy affords, I preferred it to any of them;—and I venerated it, because it was the work of our wise and virtuous ancestors; a child of the Revolution, born with the State, and consecrated by all the associations, which make us proud of our country. I have, therefore, ever since the session of 1816, opposed the call of a Convention, whether limited or general, and have laboured much to prevent it. Step by step have I followed the march of my noble friend from Chesterfield, in the campaigns he has made in defence of the Constitution, and though I have not emulated the gallantry or prowess of my leader, he will bear me witness that I have been a faithful soldier, and that I never laid down my arms, till the victory was fairly won from us. It was not till a majority of the freeholders had desired the call of a Convention, that my opposition to it ceased. From that time, my friend from Chesterfield, and all our other wise men, I believe, united in opinion, that the will of the people should be obeyed, that the Convention should be organized without delay, and that all the subjects of complaint should be considered, and as far as possible adjusted.

I have detained you, Mr. Chairman, with these explanations, because I thought them due to myself, if they were not strictly due to the Committee. I neither expect nor desire, that they should recommend to your favourable attention, the poor remarks I have to offer, on the great question in debate. These remarks I shall submit, with a consciousness, that they are but little worth; though with an humble trust, that if they have any value, it will not be lost on the candour and intelligence of the Committee.

The first duty, perhaps, which I owe to the Committee, is to acknowledge an error, into which it seems I had fallen, at an early stage of your proceedings, in not approving the order of debate, which was proposed by the gentleman from Norfolk. (Mr. Taylor,) who no longer holds a seat among us. I had been weak enough to suppose, that we had already learned the rudiments of political science—that we had not

come here to be taught the horn-book of politics—to be schooled and lectured on the elements of Government; that a great proportion of this Convention, at least, had been selected for their presumed knowledge of its doctrines, and their long experience in public affairs. But, my friends tell me I was wrong, and I am compelled to acknowledge it, by the course of argument, which some of our adversaries have pursued. It was the misfortune of my friend from Frederick, (Mr. Cooke,) of falling into a similar error,—to suppose that there were settled principles in *our* Government; at least, that they were clearly and fully enunciated, in our Declaration of Rights, and that he had succeeded in proving all that was necessary, when he had shewn, that the proposition which he advocated, was sustained by these principles, and that they condemned that which he opposed. This opinion, and the argument founded upon it, have furnished the apology for a discursive enquiry into the natural rights of man. The very eloquent gentleman from Northampton, (Mr. Upshur,) condemning abstract doctrines and metaphysical reasoning, as misapplied here, has indulged himself, in a very elaborate course of metaphysical reasoning, and refined abstraction: has cast his eye through all time; appealed to all history; vainly endeavored to imagine unimaginable things; conjectured a state of nature, which he supposes never to have existed; endeavored to ascertain its laws, and finding not even light enough respecting them, to guide him in a simple enumeration of whole numbers, or in counting a majority, has at last arrived at the bold conclusion—bold, he himself seemed to consider it—that there were no principles in Government. We cannot, Mr. Chairman, understand the gentleman from Northampton, according to the literal import of his phrase. His own principles are too well settled—his character and talents are too well known, and too highly esteemed, to allow us for a moment to believe, that he would deny to the science of Government, those elementary truths, which constitute its principles—without which, all reasoning concerning it, is destitute of foundation, and incapable of conducting us to any conclusions. He was betrayed into the language he has used, by an over-anxiety to withdraw from his adversaries, the aid of those settled doctrines, on which they have rested their argument, to persuade us, that these doctrines are mere abstractions; and to bring the question in discussion, to the test of expediency. Indeed, he has told us, that every question of Government, is a question of expediency; and that every Government should be constructed, not with reference to original principles, but with a sole view to the character and circumstances of the people, for whom it is ordained. Admit this doctrine of expediency—admit the propriety of conforming the Government to the character and circumstances of the people—and no one admits it more readily than I do—yet it does not follow, that there are no principles, by which to decide the question of expediency, none to aid in constructing the Government, so as to make it suitable to the people. The plan of every building, for the use of man, presents a question of expediency, on which the purposes for which it is destined, and the circumstances of the tenant, are to be duly considered; but no wise man would disregard, in its structure, those principles of architecture, which belong to the humblest cottage, as well as to the loftiest temple. Is it more wise, by representing the principles of our Government, as metaphysical abstractions, furnishing no aid to the deliberations of the Statesman, no safe guide to his conduct, to disparage those principles in our estimation, endanger disloyalty to the Government which rests upon them, and confound all our political reasoning? This has not been the wisdom of ancient or of modern times. From the days of Plato, down to the period of the last Southern Review, wise men have labored to establish the principles of Government, to inculcate political truths, to recommend them to the respect of mankind, and to place them in the hands of Statesmen, as guides to direct their measures, and as weapons to defend them. The author of *Pullius*, who had profoundly studied these principles, and understood these truths, commences his thirty-first number with the postulate, that “In disquisitions of every kind, there are certain primary truths, or first principles, on which all subsequent reasonings must depend.”

For the primary truths, which belong to this discussion, we can look no where, with so much propriety, as to that solemn act, which announces the doctrines of our revolution—that “Declaration of Rights,” which proclaims the principles pertaining to the Government of a free people, and is made the “basis and foundation” of our own. This Declaration, Mr. Chairman, faithfully embodies the doctrines, which gave to Algernon Sydney his crown of martyrdom, and to John Locke imperishable fame. These distinguished men, inspired by the spirit of freedom, which the history of the English Government had infused into the people, and emboldened by the accessions which the rights of the people had gradually gained from the power of the Crown, openly assailed the slavish doctrines by which the parasites of power had endeavored to defend the tyranny of the Stuarts, denounced and confuted the dogmas of Sir Robert Filmer, which asserted the divine right of Kings, and traced the origin of Government to its legitimate foundation, the will of the people. Guided by the experience of their own Government, enlightened by the history of all others, and

above all, examining, with the sagacity of wise men, the natural and unvarying relations, between the governors and the governed, they maintained those doctrines, which the Whigs in England partially recognized in their Constitution at the revolution of 1683, and which the American Statesmen made the basis of their Governments at the revolution of 1776. Ought these doctrines to be treated as vain abstractions, metaphysical subtleties, visionary theories? Ought they not to be acknowledged as solemn truths, confessed as the articles of our political faith, made the standard of our political conduct? Ought we not, as we regard the permanency of our institutions, to recommend them to the respect and deference of the present generation, to the love and veneration of posterity? "To recall men to original maxims is generally recalling them to virtue;"—this is the language of a distinguished political writer; and is the language of truth, which does not require the support of authority. The advocates for liberty, the friends of good government in all time, have endeavored to inculcate respect and reverence for principles, and have thought it wise to hold up high standards of excellence for the emulation of the people. Plato's Republic was not written with the vain hope that its perfection would be realized; but with a view to inspire a love of excellence, and create emulation. Cicero's work *De Republica* was written for the purpose of recalling the Roman people to the fundamental principles of their Government, and of recommending them to their affections and their reverence. But it came too late to reform the degeneracy of the age, or to preserve the freedom or the glory of Rome. The celebrated Edmund Burke, who dreaded the contagion of French principles, and the levelling hand of French equality quite as much as any good republican here can do, when with so much eloquence and ability and prophetic talent, he traced the causes of the French revolution, deplored its sanguinary excesses, pointed out its errors, and indicated its dangerous tendencies, when he endeavored to allay the evil spirit of reform which was rising in England, and to warn his countrymen against the ruinous example which they seemed disposed to imitate. What did he appeal to, as most dear to Englishmen? He appealed "to the word and spirit of that immortal law," the English Declaration of Right. It is to the word and spirit of our Declaration of Rights, to that law, which we should desire to make immortal, that in my humble judgment we should at all times appeal, not only to guard us against the danger of heedless reform, but to guide us in making wholesome amendments.

We have been taught, Mr. Chairman, that the education of a people should always be conducted with reference to the principles of their Government, in order that sentiments of loyalty may be sown in their early affections. The same wisdom instructs us to mould the subordinate laws, in conformity to the fundamental law of the country. It is in the spirit of these lessons, that, having adopted the Republican form of Government, we have constantly inculcated the love of liberty, of virtue, of simple, unostentatious manners, and that, to prevent an injurious inequality in the fortunes and conditions of men, the laws have been passed which abolish entails, and the rights of primogeniture. The act abolishing entails, which is coeval with our Government, and that prescribing the law of descents, which very quickly succeeded the war of the revolution, were not founded on any supposed injustice or intrinsic impropriety, in limiting the estate of the parent to his remotest descendants, or making the first-born son, the exclusive heir, but were founded on reasons purely political; reasons, which induced our ancestors to believe, that however wise, however necessary in England, for the preservation of their Government it might be, to preserve family distinctions and perpetuate family wealth, such distinctions and such wealth were unsuited to a Republican Government, and that the laws for promoting them, would be, here, not less impracticable than unwise.

It is submitted to this Committee, whether all these considerations do not recommend to their most respectful attention, the principles which lie at the foundation of our Government. If they think so, it is hoped they will not deem the time misspent, which shall be employed in further consideration of the Bill of Rights, where these principles are declared. In performing this duty, I shall not follow the example of the judge who condemned Zadig to death, upon the evidence of the torn fragments of his manuscript:—I shall not sunder the different parts of the same instrument, the text from the contemporaneous commentary, the Declaration of Rights, from the Constitution, based upon it at the same time, and by the same hands.

The first article declares, "that all men are by nature free and independent; and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity: namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." The first line of this article, is taken almost literally from Locke, who declares, that "all men are by nature free, equal and independent"—and it has given rise to the discussion here, concerning the natural rights of man. Gentlemen have endeavored to investigate those rights, in a condition of man which is supposed to have preceded society; a condition, which they have termed the

state of nature. Not being able to satisfy themselves, that such a condition of man ever existed, they reasonably conclude, that the rights pertaining to it, cannot be ascertained, and that whatever they may be, they cannot influence his rights, in a state of civil society. I readily concur in the opinion, Mr. Chairman, that such unsocial condition of man has never existed, unless under such accidental circumstances as attended the fabled case of Robinson Crusoe, quoted by the gentleman from Chesterfield, except the single instance with which the Bible history commences. That we know was of short duration, continuing only, while "man the hermit sighed"—and terminating, when "woman smiled" and dispelled forever the gloom of his solitude. Man was created for society; and social intercourse is as much a law of his nature, as that he should support his existence by food, promote his comfort by raiment, procure supplies by labor, protect himself from aggression by force. In every state of society—whether savage or civilized—whether patriarchal or political—laws arising from the nature of man, from his weakness, his dependance, his wants, his desires, his appetites, his passions, and his intelligence, must necessarily govern his social relations—regulate his rights and duties. These are deduced by reason, from the known character and condition of man, and these are the laws of his nature. They accompany him in all conditions of life, and it is to them, that the Bill of Rights, in this first article refers. This article means not to declare those political rights, which may be varied by compact, but those natural rights only, which spring from the invariable relations of man to society. It affirms to all equal freedom and equal independence, as the gift of nature—not equal political power—because that arises from compact between those, who, having equal freedom and independence, have associated together, and regulated by agreement, the political power of the society. It is reserved for the fifth article to declare the political power of the respective members of society, by indicating the basis of the Right of Suffrage—and by referring us for guidance in this behalf—not to natural, but to conventional law.

The first article of the Bill of Rights has another function, not less important than the declaration of equal freedom and independence, and certainly more practical in its character—the declaration of those inherent rights, of which men do not and cannot divest their posterity by any compact of society. As Government is instituted for the protection of life, liberty, property, to secure happiness and safety, so no Government can be legitimate to which these are sacrificed. It is happy for us that this part of the Bill of Rights has been solemnly adjudged to be constitutional law; for, to it the citizen owes the protection of his property from the power of the Government.

The second article of the Bill of Rights is a further affirmance of the doctrines of Locke and Sydney, in opposition to Sir Robert Filmer; recognizes the people, not the Prince, as the fountain of political power, and declares magistrates to be their trustees, answerable to them, not their irresponsible masters. No one here has denied these to be the genuine doctrines of our Government.

The third article affirms, that Government is instituted for the common benefit—that *that* is the best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that when any Government shall be found inadequate or contrary to these purposes, a majority of the people hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it, in such manner as shall be adjudged most conducive to the public weal." Here we have plainly declared the object of Government, the standard of its excellence, and the rule for its reform—its object, the common benefit; the test of its excellence, its capacity to attain that object, by producing the greatest degree of happiness and safety, and being secured against mal-administration; and the rule for its reform, the judgment of the majority pronouncing it inadequate to its purposes, and altering it, with a sole view to the public weal. We are saved then the necessity of looking to natural law for the right of the majority to reform; we have positive conventional law; the most solemn declaration on the face of our social compact, that the majority have a right, an indubitable, unalienable and indefeasible right, to reform, alter or abolish. It is true, that this power is to be employed when the Government is found inadequate to its object, the common benefit, and must be employed with a single view to the public good.

But, who is to judge whether the Government has been adequate to the object of its institution; who to judge of the manner of its reform? Surely the people, who ordained it, the people for whose happiness and safety it was instituted; the people, to a majority of whom the right of reform is declared unquestionably to belong—the people are the sole, the exclusive judges. It is their duty, I admit, to listen with all deference and respect to the counsels of their wise men, who may tell them—"We have been long and attentive observers of the operations of your Government; we have compared it with all the Governments of the world, ancient and modern; we are satisfied it is the best that ever existed; we can demonstrate that it has fulfilled all the great ends of its institution; that it has secured you all the happiness and safe-

ty, which it is the province of Government to secure, and that an attempt to change it essentially, is a wanton experiment to make that better which is already good beyond the common lot of human institutions; it is to sport with the blessings of Providence, and encounter the imminent hazard of losing all that is valuable in practice, in the vain pursuit of all that is perfect in theory." After attentively and impartially considering all the arguments adduced to sustain these counsels, and carefully weighing every fact on which they rest, if convinced by them, it is a solemn duty to themselves, to posterity, and to all mankind, to reject all propositions to reform, to preserve a model of so much excellence as an example to the world, and as a rich inheritance to the generations that are to come. But, if they are not convinced; if, on the contrary, their judgments are satisfied, that they have not enjoyed the degree of happiness and safety, which good Government ought to assure; that their Government is not only imperfect in theory, but defective in practice; that its defects may be safely remedied, and its practical good much enhanced—then there is but one answer which they can give to these counsels:—"We acknowledge your experience, your wisdom, your virtue—the great superiority of your attainments, and the entire sincerity of your opinions—we admire the plain, candid and manly language, in which you have spoken disagreeable truths—we thank you, sincerely thank you, for the parental solicitude with which you have raised your warning voice; but you must allow, that we too have some experience in the operations of our own Government—that we have enjoyed its blessings, suffered its evils, and have some opportunity of judging, whether the one may be abated, or the other increased—You must remember that you are endeavoring to prove to us, by rhetoric and logic, that we are prosperous and happy, when our own senses, and the reflections of our own minds, have conducted us to a different conclusion—ours is the stake in this Government—ours the loss, if ill should result—ours the gain, if happiness should attend our reform—ours, therefore, is the province to judge, and you must excuse us, if dissenting from your opinions, we feel bound to follow the dictates of our own judgments."

The people, then, Mr. Chairman, must judge for themselves, when the *casus fœderis* has occurred, when the defects of the Government require reform;—and judging that time to have arrived, the unquestionable right to reform belongs to the majority. But to the majority of whom? A majority of the community is the answer which the Bill of Rights gives; and that answer is perfectly intelligible, when we consider in connexion, the several clauses of the Bill of Rights and the Constitution. The *community* referred to in the third article, cannot mean the whole people, because they never are, and never can be consulted, either in the formation of the organic law, or in the administration of the Government. It can mean none other than those to whom, in the sixth article the Right of Suffrage is declared to belong—those to whom the Constitution itself was submitted to be carried into effect—the qualified voters. To those, then, enjoying the Right of Suffrage, it was submitted, whether they would accept or reject the Constitution, by electing or refusing to elect the members of the General Assembly. To them, the Convention held in effect this language:—"We have formed a Constitution for your Government, and have declared the rights which pertain to you and your posterity as the basis on which that Constitution rests;—we have declared that it is instituted for the common benefit, and that when it shall be found inadequate to this purpose, a majority of you have an indubitable, unalienable, and indefeasible right to reform, alter or abolish it, in such manner, as shall be adjudged most conducive to the public weal. We believe it well suited to your condition—well calculated to attain its object;—but, if experience shall teach you that we are mistaken, the corrective is in the power of a majority of you, who may alter, reform or abolish, as you may judge most conducive to the public weal;—it is referred to your wisdom to accept or reject." Thus submitted, it was accepted by the freeholders, the qualified voters, without opposition; and their act, by which they elected the members of the first General Assembly, was as effectual, if not as solemn an adoption of the Constitution and Declaration of Rights, as if an unanimous vote of approbation had been given on a formal call of the Ayes and Noes. I never entertained any doubt of the validity of our Constitution, for the want of a formal ratification;—or, if any doubts on that subject were ever impressed on my youthful mind, such as my friend from Chesterfield once felt, both he and I must have been disabused of them, I think, by the lectures of the distinguished master under whom we studied our professions, and whose memory we both revere. The Constitution being thus accepted by the qualified voters, they became the parties to the social compact; they shared the sovereignty, they constituted the *community*, to the majority of whom the right of reform belongs.

It does not necessarily follow, from the right of the majority to reform the Constitution, that the powers of ordinary legislation should be vested in the majority. This, I agree, is a question of expediency, which it belongs to the majority to decide—and in deciding it, they are bound to look to the great object of Government, the *common benefit*, and to enquire, by what organization, it will be *capable of producing the great-*

est degree of happiness and safety, and be most effectually secured against the danger of mal-administration. Upon the result of this interesting enquiry, it depends whether the majority should hold in their own hands the power of legislation, or confide it to the minority. But this doctrine of expediency, Mr. Chairman, not well understood, is of dangerous tendency, and calculated grossly to mislead us. In adopting it as the guide of our deliberations here, it may become us to bestow a moment's attention on its character. Enlightened and liberal expediency, which looks to consequences immediate and remote, calculates effects, temporary and enduring, and regards all interests, partial and general, which in short has the lasting public good for its object, and truth and justice for its guides, lies at the foundation of moral and political law, and is the true test of moral and political propriety:—while that blind and narrow expediency which regards only immediate consequences, temporary effects, and partial interests, which has for its object the present good, disregards the precepts of justice, and delivers itself up to the guidance of sophistry, is the parent of all that is false and mischievous, in morals and politics, teaches in the schools of modern philosophy, upholds the pernicious theories of Condorcet, Rousseau, and Godwin, justifies usurpation and tyranny, and recommends the most visionary and heedless scheme of reform.

The wise man, when he enjoins a rigid observance of faith, strict performance of promises, when he enforces filial duty and parental love, and commands you to do no murder, is not unmindful, that partial evil might often be avoided, and temporary good obtained, by violating your faith, disregarding your promise, failing in duty to your parent, forgetting your affection for your son, and even by imbruing your hand in human blood:—But looking beyond the narrow circle which bounds the vision of modern philosophy, he tells you that all these partial considerations must be foregone, and that the lasting peace and happiness of society imperiously require that the moral duties, he has taught, should be held in constant reverence. So the wise Statesman, looking beyond the partial evils and temporary benefits which guide the expedients of political quackery, walking in the light of experience, and governing himself by principle, will take all his measures with reference to the great and enduring interests of the community. If such light and such guidance shall conduct us to the conclusion, that the great and permanent interests of this community require that the power of the Government should be entrusted to the minority, it becomes the solemn duty of the majority to withdraw their claim, to yield the power, and with it their confidence to the minority, whether that minority consists of thousands, or hundreds, or tens, or even a single unit,—whether the Government shall continue a republic, or become an oligarchy, an aristocracy, or a monarchy. All that I require is, that the evidence of this duty should be clear and conclusive:—that in a Government instituted for the benefit of the people, and acknowledging their will to be sovereign; in a country where, under the most favorable auspices in the world, the interesting experiment is yet in progress, which is to solve the problem of man's capacity for self-government,—we should be very careful to consult our judgment rather than our fears—we should be quite sure, that in protecting an obvious, though subordinate interest, we are not leaving the paramount interests of society unguarded; that in surrendering the power to the minority, we are not abandoning the principle, that the will of the people is sovereign, and acknowledging that the question of self-government must be decided against the liberties of mankind.

With these views of the rights of the majority, and of the test of expediency to which every measure of reform must be subjected, let us proceed to the question before the Committee. The people who adopted the present Constitution, with a declaration on its face of their right to reform it, having lived under it for more than fifty years, have thought it required alteration, and have deputed us to enquire and report to them, what amendments, if any, ought to be made. The Select Committee have reported a resolution, declaring “that in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively.” The gentleman from Culpeper has proposed so to amend this resolution, as to place the representation on the basis, not of the white population simply, but of the white population and taxation combined:—and the question is upon the adoption of the proposed amendment. In considering this question, we must not be deceived by the literal import of the two propositions, and I beg permission to explain my understanding of each.

When the resolution of the Select Committee refers us to the white population “*exclusively*,” I do not understand that in the practical application of this rule, there is to be a rigid adherence to its terms:—I do not understand that the Commonwealth is to be laid off into election districts, containing a precise equality of white inhabitants, and entitled to an equal number of Delegates. I understand this word “*exclusively*,” in that sense, which would refer us to the white population, in exclusion of the black population; in exclusion of property and taxes—not in exclusion of all regard to county limits—of all regard to the interests, the convenience, the ancient habits and customs of the people. My object in applying the rule, would be to lay

off the State into a given number of districts, composed of contiguous counties, having interests as nearly identical as possible—to give to each of these districts a number of Delegates, in proportion to its white population, and to distribute the Delegates, in each district, among the several counties therein, so as to give to each county in the district, at least one member, if the number of members were equal to the number of the counties. To illustrate:—Suppose the State divided into four districts, by the lines of the Alleghany, the Blue Ridge, and the head of tide water—and suppose the House of Delegates to be composed of one hundred and twenty members. Then upon the basis of the white population, according to the Auditor's estimate of its present numbers, the trans-Alleghany district, would be entitled to about thirty-two members—the Valley district, to twenty-four—the Middle district to thirty-five—and the Eastern to twenty-nine. The thirty-two trans-Alleghany members, would be distributed among its twenty-six counties, so as to give one to each; and assign the surplus six to the six larger counties. In like manner the twenty-four Valley members would be distributed among its fourteen counties, and the thirty-five members for the midland district among its twenty-nine counties. The twenty-nine members for the Eastern district would not supply one to each of its thirty-six counties and four boroughs, and therefore in that district no county or borough would have more than one, and some of the smaller counties, must form together, election districts for single members. By such an arrangement as this, though each county would not have its exact proportion in the representation, each large district would; and in order to give to each local interest in the Commonwealth, its just weight in the Legislature, you have only to take care, that in laying out your large districts, you embrace in them respectively only those counties whose interests are essentially the same. This being done, the spirit of a just equality would be observed, whilst the regard had to county limits would soften the asperities of the reform, and be attended with many advantages, which it would be out of place here to recount.

Again, the resolution of the Committee, in referring to the white population exclusively, literally imports, that the whole number of white persons in the several districts, shall give the ratio of representation—and this was intended to be the practical operation of the rule. But this is not in the spirit of the doctrine for which we contend. We do not insist, that each white person, male and female, infant and adult, whether entitled to the Right of Suffrage or no, is entitled to equal representation. No!—Our doctrine is, that each person entitled to the Right of Suffrage, each who shares in the sovereignty, is entitled to equal political power, and therefore to equal representation. We espouse the principle of the resolution offered by the gentleman from Norfolk (Mr. Taylor,) though we do not adopt its mathematical precision. We have advocated the basis of white population, instead of qualified voters, because the former gives a more certain and convenient rule, and because it was believed, that it was substantially equivalent in effect. But examination and reflection lead me to believe that there may be, and possibly is, a material difference, in the effect of the two rules; that the number of white persons in the different districts would not be a fair index of the number of qualified voters; and that the basis of qualified voters would be more favourable to the Eastern part of the State, than the basis of white population. If there be any gentleman on this, or the other side of the House, who prefers as the basis of representation, the qualified voters, rather than the white population, who thinks that the superior justice of the former, countervails the greater convenience and certainty of the latter, I am prepared to go with him, and give it my support. I will not press the principle for which I contend beyond its reason and justice. In advocating then, the basis of white population, I must be understood as maintaining the right of the qualified voters to share equally the power of the Government; and as pressing their claims, not to a precise mathematical equality, but to a rational practical equality, assuring to every local interest, as far as can be, its due weight and just protection.

The proposition to amend, which offers the basis of population and taxation combined, is not very definite in its terms, but as explained by its mover is very intelligible. It does not propose to compound the number of dollars paid for taxes in each district, with the number of white persons therein, and thence derive the rule for apportionment, but it proposes to compound the ratios of taxation and numbers, thus—to give one-half the Delegates, according to the ratio of taxes paid, and the other half according to the ratio of white persons—or thus take for each district the mean proportional between the number it would be entitled to according to the ratio of white persons, and the number it would be entitled to according to the ratio of taxes paid. To illustrate: The trans-Alleghany district, would be entitled—on the basis of white population to thirty-two—on the basis of taxes to eleven—on the compound basis to twenty-one and a half. The Valley, on white population twenty-four—taxes ten—compound basis twenty-one and a half. Middle district, on white population thirty-five—taxes forty-nine—compound forty-two. Eastern district, on white population twenty-nine—taxes forty-one—compound thirty-five.

The proposition to amend is liable to other objections for want of precision; but candour requires us to suppose, that they will be obviated, when the proposition is carried out into its details, and therefore they need not be now pointed out.

With these explanations, the question before the Committee may be thus stated:— Shall the power of the Government be apportioned among its districts, according to the simple ratio of those who partake of the sovereignty, the qualified voters, in each;—or shall it be apportioned according to the combined ratio of white persons and taxes?

Those who advocate the simple ratio, endeavour to maintain it upon principle; to deduce it from the fundamental doctrines of our Government, and to vindicate it upon considerations of sound political expediency.

The advocates of the compound ratio, not seeming directly to controvert the general rule, that the majority should govern, and some of them admitting it, insist nevertheless that it is liable to exceptions; that it is subject to the control of these considerations of expediency which may prove it unfit for the good government of the people to whom it is to be applied, and that the circumstances of the people of Virginia render it unfit for them. They contend that a primary object of Government is the protection of property; that when its title is unsafe, no other rights can be secure, and that the peculiar condition of property in Virginia is such that no adequate protection can be given it, if the power of the Government is put into the hands of the majority. They endeavour to prove, that power in the minority is essential to the protection of their property, and that such is the singular constitution of our society, that while the property of the minority is exposed to certain injury, by giving power to the majority, the property and all the personal rights of the majority, are effectually secured by giving the power to the minority. The evidences of this peculiarity they find, in the unequal distribution of the slave property, among the different districts of the State; the unequal contributions of revenue from those districts; the variety and supposed conflict of their local interests. They show that the great body of the slaves is held by the Eastern districts of the Commonwealth; they endeavour to show, that the taxable inhabitants in those districts pay a much greater average tax *per capita*, than is paid by the taxable inhabitants of the Western districts; that there is no subject of taxation in the West which is not also found in the East, and on which a tax would not be quite as burthensome to the Eastern as to the Western people, and no subject of legislation, on which the interest of the East could be promoted at the expense of the West:—that on the interesting subject of internal improvements, particularly, while the interests of the Eastern and Western districts are variant, if not hostile, and plans might be adopted to enrich the latter, which would impoverish the former, yet the East would have no adequate motive to do injustice to the West;—and they thence infer the propriety of giving to the East a power in the Government, somewhat proportioned to their contributions of revenue, a power adequate to the protection of their property;—they thence also infer, the perfect security of the West, against the power of the East,—and the alarming danger,—that, if the power of the Government, were in the hands of the Western people;—whither they think the rule of the majority would probably soon carry it,—the property of the Eastern people would be unjustly taxed, unwise laws affecting the value of their slaves and dangerous to the peace of the community, would be enacted, and schemes adopted, which might apply the revenue contributed by the East, to the improvement of the estates of the West.

This is believed to be a fair outline of the principal grounds on which the friends of the compound ratio rest its defence. Some subordinate considerations have been called to their aid, and many ingenious, able and eloquent arguments have left it wanting in nothing, but intrinsic merit, to recommend it to our affections and our judgment.

I readily subscribe, Mr. Chairman, to the proposition, that an indispensable object of every good Government, is the security of property, and that no Government which does not afford that security, can be a safe depository of the liberty and life of the citizen:—but I utterly deny that there is any thing in the peculiar situation of Virginia, which should induce us to look for that security, in the power of the minority, or which threatens the serious dangers which gentlemen apprehend, from the power of the majority. On the contrary, I insist, that the majority have more to fear from the power of the minority, than the minority has to fear from theirs:—that under the rule of the majority, property will be more secure, legislation more just and wise, the people more happy, and the country more prosperous.

Before we proceed to a more particular consideration of this question, it may be well to review the statements which have been submitted to us, deduced from the tables furnished by the Auditor, and to make such corrections as they may be found to require.

The tables of population show us that there are probably in the Commonwealth at this time, about 632,000 white persons, and about 448,000 slaves, thus distributed

amongst the different districts:—In the first or Western district, about 151,000 whites, and 17,000 slaves; more than ten whites for each slave:—in the second or Valley district, about 135,999 whites, and 3500 slaves, little more than four whites to a slave:—in the third or middle district, about 17,000 whites, and 221,000 slaves—the slaves exceeding the whites by about 24,000, nearly one-eighth of the white population; and in the fourth or Eastern district, about 165,000 whites, and 176,000 slaves—the slaves there, also exceeding the whites, about 10,500, about one-sixteenth of the white population. Thus, it appears that the aggregate of slaves on the East of the Blue Ridge is about 397,900, while the aggregate on the West is about 59,500, nearly eight to one—while the aggregate of white population on the East of the mountain is about 362,500, and that on the West 319,600—the difference only about 43,500. It is, therefore, true as is stated on the other side, that the slave population is very unequally distributed at this time, and is at present essentially an Eastern interest.

From the tables of taxation, the gentleman from Chesterfield deduced, that the people of the first district paid of the whole taxes on land and personal property, an average *per capita*, of 23 cents 8 mills; and the people of the second district 42 cents 6 mills, while the people of the third district paid 72 cents 2 mills, and those of the fourth 63 cents 9 mills—making an average for the people on the West of the Blue Ridge of 32 cents 2 mills; and for the people on the East of 62 cents 2 mills. He selected individual counties in the different districts, between which there was a still more striking inequality, and showed that the average contribution of the slave tax *per capita*, in the several districts, was the most unequal of all.

That there are inequalities in the contributions of revenues from the different districts of the State, owing to the unequal distribution of wealth, no one doubts. It is certainly so, in our country, as it is in all countries, and as it must be, so long as taxes are laid upon property and not on polls; so long as the ability to pay shall be regarded as furnishing any criterion of the amount of contribution. But the statements which have been exhibited to you are calculated to deceive. They make the impression that the several sums stated, show the average *per capita*, actually assessed on the tax-paying inhabitants of the several districts—this, however, is not the case: the calculations are made by distributing the whole amount of taxes assessed, in each district, on the whole number of free persons in the district, on whom by law a tax could be assessed, whether black or white, male or female, infant or adult. I have made an estimate of the average *per capita*, actually assessed, on the tax-paying inhabitants of the several districts, and the result is materially different; showing inequalities, it is true, as must have been anticipated, but inequalities less glaring, and less calculated to excite alarm, or, to countenance the extravagant claim for power which has been founded upon them.

The Committee will remark, that I have made this estimate from the Auditor's tables of the taxes assessed for the year 1825, and his lists of persons charged with taxes on lands or other property, in the several counties and corporations in the Commonwealth. There will be a slight inaccuracy in the estimate of the land tax, resulting from the circumstance, that this list excludes all those charged with a tax, on parcels of land in the country, less than twenty-five acres. But this inaccuracy cannot materially vary the result.

Calculating from these data, I find the average tax *per capita* as follows:—in the first district, land tax 80 cents, tax on other property 59 cents, total \$1 39; in the second district, land tax \$2 39, tax on other property \$1 12, total \$3 42; in the third district, land tax \$2 31, tax on other property \$2 43, total \$4 74; and in the fourth district, land tax \$2 67, tax on other property \$2 43, total \$4 50. We thus see that the average land tax of the Valley district is equal to the average land tax of the middle district within one cent, and is superior to the average land tax of the Eastern district, 23 cents—that its average total tax is less than the average total of the middle district, \$1 32—that is about 23 per cent. and less than the average total of the Eastern district, by \$1 05—that is about 22 per cent. But, the taxes on slaves have been reduced 8 cents for the present year, and this reduction would cause the average of the several districts to stand thus—first district \$1 36—second district \$3 34—third district \$4 43—fourth district, \$4 19, bringing the Valley district within \$1 11 of the middle district, and within 85 cents of the Eastern. It must be farther remarked, that in these estimates, the towns of Richmond, Petersburg and Fredericksburg have been included within the tide-water district. Now, although these towns are situated at the head of tide-water, they do not, for any of the purposes of this argument, belong to the tide-water district. Their sympathies, their interests are with the country that lies above them, which founded them, supplies their trade and furnishes their wealth. Withdraw them from that district, and you diminish very materially its average tax. We have not the means of estimating the taxes paid in Fredericksburg, our tables containing no separate return for that town. Subtracting Richmond and Petersburg only, for which we have separate returns, and then the average of the Eastern district will be, of land \$1 84, of tax on other property, \$2 12,

total \$3 96; thus reducing its average land tax 46 cents below that of the Valley, and leaving its total average only 53 cents above it.

In all these estimates it will be observed that the contributions of the trans-Alleghany district are very much below par. It is easy to understand why the average tax on personal property, is much lower there than in the other districts, because of the small number of its slaves—but why the average land tax should be so, is an enquiry, the answer to which does not lie on the surface. It is probably to be found in two considerations: First, very large quantities of land, in different parts of that district, on which large arrears of taxes are due, have been vested in the Literary Fund, by the operation of the tax law of 1814, and are now stricken from the tax books, because the lands belonging to that fund pay no taxes—secondly, and chiefly, in the year 1817, when all the lands of the Commonwealth were assessed, it is well known that the public mind was acting under a delusion, which misled its estimates of the value of every thing, and perhaps of nothing more than of the value of land. The combined influence of protracted war in Europe, which for many years had given an extensive market, and high prices, to the products of our soil—our own war, which throwing a large amount of mercantile capital out of its regular employment, left it to seek investment in land; and the great multiplication of banks, which creating a large fictitious capital, increased to an extravagant degree the speculations in real property—had inflated the market price of that property beyond any reasonable relation to its intrinsic value. These causes, in Virginia, had exerted their principal force in the agricultural country, of the Valley, and the Eastern side of the Mountain, and especially the banking towns, and their immediate vicinities. They were but little felt in the trans-Alleghany country, remote from the influence of the banks—remote from market, and from the scenes of speculation. Its lands were the less sought either by the emigrant or the speculator, because of the difficulty in their titles. The land law of 1779, drawn, it is said, by the same George Mason, the author of our Constitution—men are not equally wise in all things!—the land law of '79 had operated to produce infinite confusion in the land titles of the West; and this cause, as well by retarding settlements as by discouraging purchasers, had depressed the market value of their lands. Thus, while extraneous causes of one kind contributed to enhance the market value of lands East of the Alleghany, extraneous causes of another kind conspired to depreciate the market value of the lands West of that mountain. I should have inferred, therefore, that the assessment of 1817, which the law required to be made according to the market value, would have overrated the lands on the Eastern waters, and underrated those on the Western. We all know that the lands on the Eastern waters were assessed too high, and I am informed that those on the Western waters were, in truth, assessed too low. Looking at a statement made from the assessors' tables, we find that while the average value of the lands on the Western waters was but 92 cents per acre, those of the Valley were \$7 33, those of the Midland district \$8 20, and those of the Eastern district \$8 43 per acre. These causes, added to the great increase of population in the Western district since the assessment, leave no reasonable doubt that a new assessment would reduce the average of all the lands of the three districts upon the Eastern waters, especially of the tide-water district—would raise the average of the lands in the Western district, and would place the land-tax of that district nearly upon a ground of equality with the land-tax of the other districts of the State.

It does not follow, Mr. Chairman, from the inequalities of contribution in the different districts, that there is any injustice in the measure of taxes imposed, or that those who pay least can best bear the burthen imposed on them. If taxes are imposed on the property of the country, in the proportion of the ability of its owners to pay, those who have more property, and therefore pay more taxes, have, surely, no cause to complain. With equal prudence, economy, and good management, the rich will be always able to pay their contributions to the Government with more ease than the poor. The contributions of the rich man are paid from his abundance, and if they restrain his enjoyments at all, they curtail only his luxuries—while the poor man withdraws his modicum from a bare competency, leaving scarcely enough behind for the necessities and the ordinary comforts of life. It has been the object of our laws to distribute the taxes among the people in proportion to the value of their property, assuming that as the best criterion of their ability to pay, and adopting such general rules to effect their object as were found by experience to be most convenient in practice. If they have failed in this object, as no doubt in some degree they have, the failure has not been greater than was to have been anticipated from the intrinsic difficulty of the subject. If you will measure the ability of the several districts by the amount of their labor, and allow the whole number of their inhabitants, respectively, to be a fair standard of their comparative labor—you have a test by which to try this question. I do not vouch for the accuracy of this test, though a better one does not now occur to me—and if you will apply it, by dividing the whole amount of taxes in each district, by the whole number of its inhabitants, you will find the average *per capita* not very unequal in

the several districts East of the Alleghany—and unequal in the Western district, no doubt, because of the accidental under value of its lands as already explained. The taxes of the several districts for the year 1829, distributed among all the inhabitants of each, gives an average, *per capita*, nearly as follows: In the first district, 15 cents; in the second, 29 cents; in the third, 31 cents; and in the fourth, 30 cents.

Mr. Johnson being much exhausted, asked the indulgence that the Committee should rise.

It was accorded to him on the motion of Mr. Giles, and the Committee rose accordingly—and on the motion of Mr. Mason of Southampton, the Convention immediately adjourned.

THURSDAY, NOVEMBER 12, 1829.

The Convention met at eleven o'clock, and its sitting was opened with prayer by the Rev. Mr. Horner, of the Catholic Church.

Mr. JOHNSON resumed his speech of yesterday, and continued to occupy the floor till the hour of adjournment.

I have been thus particular in examining the manner in which the taxes are distributed among the different districts of the Commonwealth, not because it was essential to the merits of the question now before the Committee, but because I thought it would remove from our minds the alarming spectacle of poverty making war upon wealth, and would satisfy impartial men that each district pays, as nearly as the operation of laws always imperfect could be expected to produce, a just contribution to the Government—that no district is in a state of pauperism—none in a situation to be tempted to seize unlawfully on its neighbor's property—and that in all human probability, when, hereafter, a Western man shall vote from the pocket of his Eastern brother, one dollar, in the form of taxes, he will vote from his own pocket, at the same time, nearly an equivalent sum, one at least, which he can ill spare, and will be as little able to pay. I regretted very much to hear that part of the remarks of the gentleman from Accomack, (Mr. Joynes) in which he endeavored to show that the whole country West of the Blue Ridge did not pay into the treasury a sum sufficient to defray the expenses of its delegation to the General Assembly, and of the administration of justice within its own limits. Remarks tending to institute odious comparisons, and to excite unpleasant sensations, coming from a gentleman who has manifested so much liberality, so much kind and good feeling, are exceedingly to be regretted—and I felt them the more because they came from that part of the State, the extreme East, from which on former occasions, I have so often heard remarks leading to collision and controversy, between the extreme West and extreme East, which required the interposition of moderate men to compose. I have not examined the gentleman's calculation to ascertain whether his conclusion is right or wrong. After having ascertained the precise amount of taxes paid by each district; after ascertaining the average amount *per capita*, paid in each—what possible influence on the question before us can it have—to know that the contributions of any district are not adequate to that part of the expenses of the Government, which the calculations of gentlemen may choose to assign to it? Surely the expenses of legislation, and of the administration of justice are not local in their character, pertain to no district, and can be charged to none. They are, if any can be, the expenses of the whole Commonwealth, incurred for the common weal and justly payable from the common purse. Such imputations as these, if it were proper to repel them, would lead to the unpleasant and unprofitable enquiry, into the objects to which the public revenue was applied; the districts in which it was expended; the local causes which increased the expense of Government, and would impose on us the invidious duty, which I certainly shall not perform, of indicating the various counties, in the Eastern district, which do not contribute their share of the expenses of Government. But we must forbear from such topics, they do not become the occasion.

It will be proper, Mr. Chairman, to disarm this question of some of its terrors to one party; disrobe it of some of its charms for the other, by examining with care its effects on the distribution of power, among the different districts of the Commonwealth. The calculations on this subject, have been made with reference to the House of Delegates, and upon the supposition that *that* House should consist of an hundred and twenty members. They are made upon the Auditor's estimates of the population of the present year. These are supposed by some gentlemen to be inaccurate, and the Auditor does not himself rely with confidence upon them;—but I assume them as approximating the truth sufficiently for the purposes of the present argument.

Let us, then, compare the power of the four great districts of the State, in such a House of Delegates, as it would be on the present basis, the equal representation of counties, as it would be on the compound basis proposed by the gentleman from Culpeper, and as it would be on the basis of white population. The Committee will understand my references to the districts, if they will remember, that I number them from West to East, denominated the Western, the first district.

In such a House of Delegates, the relative power of the several districts would stand thus :

On the basis of equal county representation.

First district, 27—2d, 16—3d, 32—4th, 43.

Compound basis.

First district, 21½—2d, 21½—3d, 42—4th, 35,

Simple basis of white population.

First, 32—2d, 34—3d, 35—4th, 29.

Divided by the Blue Ridge, the East and West, would stand thus :

By equal county representation, W. 45—E. 75

By the combined ratio, 43 “ 77

White population, 56 “ 64

In making these calculations, we disregard small fractions, and convert large ones into integers, that we may give the results in whole numbers.

By this method of calculating the effect of the two propositions, it would appear, that, adopting the compound basis, the West would lose, and the East gain two members out of one hundred and twenty, and that, adopting the simple basis, the West would gain, and the East lose eleven. But if instead of taking the whole number of white persons, as the basis, you take such only as are qualified to vote, there is reason to believe that the result would be materially varied. We have no means of ascertaining the number of qualified voters ; there is no record of them any where, and we have certainly no *data* from which we would estimate them accurately. But we may approximate them perhaps sufficiently near, to answer the purpose of illustration, by estimates from such *data* as we have.

Until I came into this Convention, Mr. Chairman, I had habitually considered a representation apportioned according to the whole number of white people in the different districts, and one apportioned according to the qualified voters in each, as substantially equivalents. I had supposed, that the ratio of the one, would be a fair index of the ratio of the other. I had never carefully examined the subject, 'till my duties in the Legislative Committee, called my attention to it, and induced me to doubt the correctness of my former impressions. The able argument of the gentleman from Chesterfield, rivetted my attention to it, and induced me to think, that those impressions were probably wrong. There is much weight due to the consideration, that those who perform menial services—the day-labourers, the cultivators of land which they do not own, are in the Eastern districts, principally slaves—while those who perform similar functions, in the Western districts, are chiefly white persons ; and this consideration tends to the conclusion, that the ratio of qualified voters, to the whole white population, would be greater in the East than in the West. I have appealed to the only documents in my power, to test this conclusion—the lists of persons charged with taxes, furnished us by the Auditor. He has furnished two lists—the one, of the number of persons in each county and corporate town, charged with any tax, on a town lot, or part of a town lot, or any parcel of land, not less than twenty-five acres—the other, of the number charged with any tax on property. Now, although each of these lists, contains male and female, young and old, black and white, without discrimination ; and, therefore, cannot inform us correctly of the actual number of adult white males, upon either, yet I have thought, that, probably, they would not very far mislead us, if we regard them as an index of the relative number of free adult white males, in the several districts, and as an index of the relative number of qualified voters in each. If we take the list of those charged with taxes on land, as giving the ratio of freehold voters, and the other list as giving the ratio of voters, when the Right of Suffrage shall be extended to house-keepers, who pay a revenue tax, then, upon the basis of the qualified voters, the relative power of the districts would stand thus :

According to the land list—1st, 27—2d, 20—3d, 37—4th, 36.

According to the property list—1st, 29—2d, 21—3d, 39—4th, 34.

Dividing by the Blue Ridge, the power would be,

According to the first—West, 47—East, 73.

According to the second—West, 50—East, 70.

Thus, according to the most favourable of these estimates, the West would gain, and the East lose five members, in a House of an hundred and twenty, and the majority on the Eastern side of the Blue Ridge, would remain twenty.

These statements may serve to show, that although upon any basis of representation which has been yet suggested, a large portion of power will pass from the tide-

water district, to those above it—yet upon no basis, can the power pass now, from the Eastern to the Western side of the Blue Ridge, and that upon the principle for which we contend, if it pass at all, it must pass at a distant day, slowly, gradually, safely—unaccompanied by the dangers which have been apprehended—they may serve to show to calm reflection, that the stake depending on the present contest, is not so great, the prize to be won not so valuable, the loss to be sustained not so dreadful, as has been pictured to our imaginations. I may have occasion again to refer to them in illustration of my views.

In taking leave, for the present, of those calculations which I have introduced as correctives of the estimates made on the other side, I cannot forbear remarking on the seeming inconsistency of gentlemen, who losing no occasion to throw ridicule on numbers, and political arithmetic, have arrayed them against us, in a most formidable phalanx, and have drawn from them their strongest and most impressive arguments. I have no doubt, that the tables of population and taxes, which have gone out to the public, with the arithmetical calculations of gentlemen, on the other side, which have accompanied them, and their inferences of change of power, and danger of oppressive taxation, have been the principle cause of the great excitement in the public mind, and of the alarm which is felt in the Eastern districts of the Commonwealth; an excitement and alarm which have already done mischief, and threaten to do more; which have already, through the instrumentality of instructions, deprived an honorable member of his seat on this floor, and may soon confound the councils of this Convention. I mean not at all to interpose between the district and its delegate:—it is not for me to enquire into the causes which led to the instruction and the consequent resignation—but as a member of this Convention, anxious for the harmony and profitable issue of its labours—as a citizen of the Commonwealth, deeply interested in its welfare, I cannot but lament the example, which, if followed generally, must deprive this Assembly of its deliberative character, and deprive it of all power to effect the purposes for which it was appointed. While we are sitting here deliberating on the great interests of the State, candidly comparing our opinions, endeavouring to reconcile discordant views, adjust conflicting claims, secure every right, and protect every interest, ambiguous words are to be scattered among the people, scraps from newspapers and shreds of arguments to be circulated among them—in a moment of tumultuous agitation, they are to be collected, at the hustings and muster grounds, at the taverns and cross roads, to form specific instructions, for their delegates on the most delicate and difficult of all the subjects of their deliberation—thus, depriving them of the power of making or receiving concessions, and putting an end to all further consultation. Can any considerate man be blind to the confusion and mischief to which such measures must tend? Do not understand me, Sir, as questioning the right of the constituent to instruct his representative—this I regard as one of the settled doctrines of our Government, to which I most cheerfully subscribe. But surely I cannot be mistaken in supposing that there never was a more unfit occasion for exercising it, than that on which the people have endeavoured to put in requisition, the experience, the wisdom, and prudence of the State, not to enact laws, but to propose for the consideration of the people themselves, amendments to their fundamental law. If this example is to be followed, had we not better return home, restore to the people the trust they have confided to us—tell them that all hope of amending their Constitution is perfectly illusory—that the solemn declaration of the right of the majority to reform, is indeed a visionary theory, since it is utterly impracticable for the people to exercise this right without the aid of representatives, and since those representatives cannot be trusted even to confer together, and propose amendments? I beg pardon for this digression, and will return to the question before the Committee, whether the compound or simple basis shall be preferred.

It has been urged as an objection to the report of the Select Committee, that it proposes to introduce something new into the Constitution. It certainly is not new to the American Republics, to apportion representation according to the ratio of white population; and whether it is new to our own Constitution, it cannot be material, to enquire, since the objection must equally lie against the proposed amendment. Both propose a change in the Constitution, and the question is, which is preferable.

We are cautioned, however, against all change, unless called for, by strong reasons;—we are referred to the nearly equal division of parties, which probably exists here, on this question—and are emphatically warned against the impropriety of an important change, by a lean majority of one or two, forcing upon a large minority, a Constitution that would be abhorrent to them. I readily admit, that no important changes should be made, that are not called for by clear and strong reasons, and no one can be more sensible than I am, of the imprudence of forcing upon a large minority, a Government that is odious to them. But the existing inequalities in the representation are so glaring, and the discontents produced by it are so strong, that every one seems to concede the propriety of some reform, and both the propositions under consideration will effect that reform to a considerable extent. If the reform

proposed by the Select Committee, be objectionable, because it is unacceptable to a large minority, would the reform proposed by the gentleman from Culpeper, be the less objectionable, it being at least as disagreeable to a small majority? Or, shall we be told that the gentleman from Culpeper, and his friends, are not insisting on any reform, but are content with the present Constitution? Still, however, the objection recurs:—it is with the present Constitution, that we suppose the majority is discontented, and the question again arises, shall they be compelled to submit to it? In whatever light we view it, therefore, a nearly equal division of opinion would present matter for serious consideration, and not less serious regret. In this view of the case, it may be worthy of some attention, that if the majority here should be found in favour of the report of the Committee, and we faithfully represent the will of our constituents, it is probable that the majority of the people who approve it, will be larger. This House being composed of an equal number of members from each Senatorial district, these districts having been arranged according to the Census of 1810, so as to contain as nearly as convenient, equal numbers of white population—and the population of the Western districts, having since increased by a much greater ratio than that of the Eastern districts, it is fair to conclude, that a proposition sustained here, by a majority consisting chiefly of Western members, would be sustained by a larger majority of the people. We have no warrant, however, for counting majorities, at present, on either side, and it is our duty to proceed with candour, and liberality to examine the merits of both propositions, and to recommend that which shall be found best, to as much favour as possible.

When we have established that the people are the fountain of political power, and their happiness its object—that a majority of those entitled to suffrage have a right to reform their Constitution, and thereby regulate the political power—it must necessarily follow, that the majority may rightfully retain the power of ordinary legislation, unless it can be shown that the object of good Government will not thereby be obtained. Gentlemen have, therefore, with great propriety, assumed upon themselves the burthen of proving, that in Virginia, this power in the hands of the majority, would be inconsistent with the public welfare. They insist, that as a leading object of all Government, is the protection of property, so, there is no mode of affording that protection so effectual and so proper, as giving it a direct influence in the Government, by entitling it to representation. It is by thus claiming representation for property, that they insist on placing power in the hands of the minority. Let us examine the arguments by which this claim is sustained.

Gentlemen tell us, that by our own concessions, we surrender the power of numbers, the right of the majority, and admit the propriety of giving property an influence in Government, when we agree to exclude many from the polls, and require a qualification in property, to give the Right of Suffrage. This argument is founded in mistake; we have never advocated the power of numbers without distinction of persons; all that we have endeavoured to maintain, is the equal power of those who share the sovereignty and the consequent right of their majority. The qualification of property which we require, to give admission into this number is, with no view to give power to property, but is, like the qualification of age, and sex, an evidence only of fitness for the exercise of political power. If it were intended to give power to property, the richest and the poorest voter could not enjoy equal portions of power. So far then, as this illustration is entitled to respect, the argument founded upon it turns in favour of the equal right of every voter, without reference to property, in favour of the simple basis of representation.

Experience and precedent have been appealed to, and the learned gentleman from Orange, (Mr. P. P. Barbour,) has warned us of the very just distinction between experience and experiment; and giving us wise caution against the dangers of the one, has prudently commended us to the guidance of the other. It was hardly to have been expected, after this salutary lesson, that the gentleman, to sustain his argument, and to enlighten the path of our duty, would have looked for examples in the twilight of Roman history. When we substitute for our own, the experience of other nations, and other ages, we should at least require that it should come to us well attested by authentic history. But I am willing to allow to the argument all the aid it can derive, and avail myself of all the light that can flow from the example referred to. The centuries and tribes of Rome are the examples to which our attention has been called—the former as furnishing a precedent of the representation of property in a republic. The centuries, it is true, in which the richest class of society was represented, furnish to my mind, so far as the dim light of my information enables me to judge, a fair illustration of the representation of property; and I ask whether this example in the Roman Government is seriously recommended to our imitation?

[Here Mr. Barbour, in explanation, said, that he had referred to the Roman republic as furnishing an example at one time of the representation of property alone, by centuries, and at another time, of the representation of numbers alone, by tribes.

He had said that he did not approve either of these extremes—he would prefer to combine them, as in the proposition of the gentleman from Culpeper.]

This explanation, Mr. Chairman, does not vary the view I have taken of the subject, nor can it add force to the example which has been quoted. The centuries and tribes of Rome, were not extremes of aristocracy and democracy of which the Roman people made experiment at different times and separately. They existed together, and for ages. They were at the foundation of the patrician and plebeian orders—originated during the monarchy, and were continued in the time of the republic. They were the inspiring cause of the angry dissensions between the different orders of the people—of the grinding oppressions of the poor, and the lawless inroads upon the property of the rich. The power of the monarch was necessary to balance the contending factions, and restrain the dangerous excesses of each—and in a few short years, less than twenty, after the expulsion of the Tarquins, and the destruction of the monarchy, these excesses led to the appointment of the first Dictator, the recession of the people to the sacred mount, and the first serious petition for an agrarian law. In the tribes the people were not represented, but appeared in proper person to act their part in public affairs. The scheme of centuries and tribes was designed to balance numbers and wealth against each other; but, the history of the republic affords more of warning against its mischiefs than commendation of its success. I will not, however, claim the benefit of this example and urge it as a caution against the danger of giving representation to property in our republic. I know that our condition and that of the Roman people is so essentially unlike—our representative republic so radically different from their mixture of aristocracy and democracy, that it is not safe to reason from one to the other. The Roman Government, indeed, in the opinion of Cicero, its greatest admirer, and ablest vindicator, owed its chief excellence to its strong aristocratic character—a merit to which our Government surely has no claim.

It is utterly in vain, Mr. Chairman, that we appeal to any of the ancient republics for information to guide us. We know them all most imperfectly, and the little we do know teaches us only that they contain no instruction for us.

The modern European republics will supply as little aid to our deliberations. We should look in vain to Venice or St. Marino, to Holland or Switzerland, for the experience of a system like ours, operating upon a people like ours—or for information to guide us to the best means of protecting the peculiar interests which arise out of the peculiar population of Virginia. How would it avail us, for example, to know what causes preserved so long the little Italian republic, with a few thousand inhabitants only on a mountain top, contented and happy, though poor, safe amidst surrounding nations, though without military force, and perfectly tranquil in the operations of its Government, though without the ordinary checks and balances! Or what would it profit us to inquire, how it has happened that in the small democratic cantons the liberty of the people, with all the rights of person and property, were preserved for centuries, though every male citizen, above fifteen years of age, was admitted, in proper person, to share in the legislation of the country?

Just as little useful information or salutary warning is furnished us on this question by the experience of the French republic—a Government that was thrown up by a convulsion from the abyss of despotism, floated for a few years on the waves of a bloody revolution, and sank again, as they subsided, into the bottomless deep. Such experience might teach us the utter unfitness of any people for a Government to which they have been wholly unused—and the great dangers which attend violent and sudden transitions from one extreme to another—but, none of the examples of the European republics can assist us in deciding, whether it is wisest in Virginia to base the representation upon numbers, or property, or a combination of both.

The British House of Commons has been referred to, for the purpose of showing the intimate connexion between taxation and representation, and of proving that in England, where our system of representation had its birth, its foundations were laid in the power of imposing taxes.

To the experience of England, Mr. Chairman, the American Statesman may in general safely refer. We are better acquainted with her history, more familiar with her institutions, than with those of any other foreign country. From her common law, her jury trial, *habeas corpus* and *magna charta*, we learn the most valuable lessons of jurisprudence, and from these our ancestors imbibed their love of civil liberty, their respect for the rights of persons and the rights of property. In her Government we see a well-adjusted balance of power; and with all its imperfections on its head, it is probably better suited than any other to her own peculiar condition. I can readily understand how its king, lords and commons, with all the inequalities of its representation, may be well adapted to the Government of England, and yet neither of them be a fit model for our imitation. A mixed monarchy, for the Government of an insular people, surrounded by powerful nations, and under the necessity of maintaining expensive naval and military establishments, may find its strength and its ef-

fiacy in those very provisions, which, in a country like ours, would be justly regarded as intolerable defects. We could not here tolerate either its monarchy, its aristocracy, or the corruptions of its House of Commons.

But, the example of the House of Commons is quoted to prove that representation is founded on taxation. True, Sir, that at an early period of the English history, the independent spirit of that people contested with their monarch, the right of taxing them without their consent, and at last succeeded in maintaining that no contributions should be levied upon them, but such as were freely given in Parliament through their representatives. It is true, also, that the Knights and Burgesses, originally summoned by the monarch to vote supplies only, availed themselves of this power to extort from the throne, a participation, with the King and his nobles, in the legislation of the kingdom. But, what Monarch or noble Barons have we here, from whom to purchase, with our treasure, the right of legislation? And what peculiar connection can there be, between taxation and representation, in a country, where it is as much the settled doctrine that the people shall be bound by no laws made without their consent, as it is that they shall not be taxed without their consent? When you have established that the people cannot be taxed without the consent of themselves or their representatives, you have advanced no farther in ascertaining how representation is to be apportioned among the people, than when the broad principle is acknowledged that no law, affecting life, liberty, or property, is binding on the people without their consent. Surely, the example of the House of Commons can give no support to the proposition, that representation should be apportioned in any degree to taxation. The people of England never insisted, that each man should vote his own contribution, that the votes of their representatives should be valued according to the amount of their respective contributions, or that the several interests on which contributions were levied, should be represented, in the proportion of their wealth. The poorest borough, and the richest city, the largest and the smallest shire, has its representation, without any reference to wealth, amount of taxes or population. The forty counties in England, send each two members to Parliament, notwithstanding their great disparity in wealth and population, and the residue of the 513 members, furnished by England, are supplied by the large cities and the small boroughs without the least regard to their wealth, or their contributions to the Government: the large majority of them, are comparatively poor and insignificant, while some of them would scarcely be able to defray the expenses of their members during a single session, perhaps not able to pay for the wine drank by them at a single dinner. The great county of Middlesex, and its towns of London and Westminster send eight members to Parliament. If they were represented in proportion to their taxation, they would probably furnish a majority of the House of Commons. A statement made by Burgh, the great advocate of English reform, referred to, probably by the gentleman from Culpeper, (Mr. J. S. Barbour) shews that in the latter part of the seventeenth century, Middlesex and its towns paid 265 parts out of 513, of the whole land tax of the kingdom, permanent and annual; so that a proportionate representation would have given them a decided majority of the whole number of English members.

I cannot here forbear to remark, that gentlemen have seriously objected to the representation of numbers, because of its tendency to throw the power of Government into the hands of small populous districts, whose representatives, acting in concert, would exert an injurious influence over the legislation of the country. They tell us that Boston, or New York, or even Baltimore, represented in proportion to its numbers, would soon controul the councils of its State. And what is the remedy proposed for that evil? Instead of a salutary check, by limiting the representation in such overgrown districts; by anticipating the probable growth of the tide-water towns in wealth and population, and limiting their representation to a prescribed number, it is proposed to give them additional power in the Government, by adding their wealth to their numbers. The city of Richmond, which, upon the ratio of the white population, would be entitled, at this time, to one member only, would be entitled on the ratio of its taxes to more than four, and on the combined ratio to nearly three.

The principles of our revolution have been appealed to; and it has been supposed that the spirit of our fathers, which refused submission to taxes imposed by a Government, in which they were not represented, should inspire a just opposition to every scheme of representation, which was not apportioned, in some degree, to the amount of taxes imposed. If this, indeed, were the true principle of the revolution, is it not wonderful, how little regard was paid to it by the fathers of the revolution? That it did not find some conspicuous place in their Declarations of Rights, or have a controlling influence in the provisions of the Constitutions which they themselves formed? But do gentlemen seriously believe, that the war of the revolution originated in a desire to obtain a representation in the British Parliament, proportioned to our population, or, indeed, any representation at all? They certainly do not; for they ask us, almost in derision, what would have been the fate of a proposition from the Bri-

tish Parliament, to grant her colonies a representation in the House of Commons, proportionate to their population, on condition that they would submit to be taxed? I unite with the gentlemen in supposing, that our fathers had too much good sense, too much prudence and foresight, to have consented to surrender their own House of Burgesses, their own power of legislating for themselves, and taxing themselves, subject only to the royal negative, to have bound themselves indissolubly to a Government, acting at the distance of 3000 miles from them; to have sunk their consequence and their power, by becoming an integer of the British nation; and have abandoned forever, all hope of independence. I unite with them in believing that the proposition would have been rejected; and not less certainly would it have been rejected, if they had been offered a representation, proportioned to their population and taxes combined. The principles of the revolution teach us, that no people should be taxed by a Government, in which they are not represented; but they do not instruct us, that representation and taxation should bear any given ratio to each other. They would rather lead to the conclusion, that as representation is the organ, through which the public will acts upon the public interest, it should be proportioned with the sole view of fairly embodying that will.

Gentlemen, endeavoring to fortify themselves with authority, and seeming desirous to supply force by numbers, have invoked the Constitution of the United States, and of several States of the Union.

They suppose the Constitution of the United States, to furnish an example worthy of great respect; because, in apportioning representation among the several States, it has abandoned the guide of white population; has adopted the Federal number, which, in effect, gives representation to property, and has provided, that representatives and direct taxes, shall be apportioned, according to the same standard. Need I remark on the inconsistencies of gentlemen, who, while they quote the example of the Federal Constitution, lose no opportunity to reproach the Federal Government, with corruption and mal-administration?—who, while they hold up the provisions of that Constitution, as fit models for our imitation, take great pains to inform us, how utterly it has failed to attain the great ends of its adoption; how it has been wrested from its original purpose, and made the engine of injustice and oppression? No, Sir, I entertain too much respect for the Constitution of the United States, to allow myself to repel the argument drawn from it, by relying on the imputations which have been made on its practical operation. I regard it as one of the happiest efforts of human wisdom, prudence and foresight. Considering the intrinsic difficulty of the subject—the delicacy and importance of the interests to be adjusted—the jealousies to be soothed—the diversity of opinions to be consulted and harmonized—the opposing powers to be balanced—it is really wonderful how admirably the work has been performed, with how much fitness the means have been adapted to the end, and how much practical good has been attained. The errors and abuses in the Government, which certainly have not been few or trivial, and which deserve not to be excused or palliated, are incident to the imperfection of human institutions, and the incurable frailty of human nature, and ought not, perhaps, to be ascribed to any particular fault in the Constitution. To the example of this Constitution, then, I am willing to pay great deference and respect; but we must be careful not to misapply the example. We must recollect, that we are not the deputies of thirteen independent sovereignties, endeavouring to form a confederacy, and establish a Government, charged with its foreign relations, commercial and diplomatic, with the conduct of its wars, with the common defence, and with the preservation of peace and harmony among its several members—that we are not charged with the duty of surrendering a part, and retaining a part of the sovereignty of independent States—that we are the delegates of a single people, members of the same political society, owing an undivided allegiance to the same Government:—living under a Constitution which acknowledges the right of the majority to reform—and now charged with the duty of making such reforms as will best assure a fair, just, and wise expression of the public will, on those measures of internal domestic legislation, which are intended to secure the property, liberty, and life of every citizen, and promote the prosperity and happiness of all.

It is obvious, then, that as the districts which we represent, have no separate independent sovereignty, none of them can impose a veto on our measures, none prescribe indispensable conditions of our action—while, in the Federal Convention, each State, even the smallest, could dictate the terms, on which alone it would be bound by the measures agreed upon. Whatever, therefore, we can fairly trace to that spirit of compromise and concession, which was indispensable to the success of the Federal Convention, will lose its authority here, in a discussion of what is right in principle—what will be just and wholesome in practice—what the majority ought in prudence to adopt. A little attention to the history of the Constitution of the United States, will show, I think, that the apportionment of representation among the several States, was the result of that spirit of compromise and concession.

When the articles of confederation were reported to the old Congress in July, 1776, they proposed that contributions to the General Government should be apportioned among the several States, in proportion to the whole number of inhabitants in each, and that each State should have an equal vote in the councils of the nation. Both these propositions were strenuously debated. It was agreed by all, that contributions should be in proportion to the wealth of the respective States—in proportion to their ability to pay—but there was great difference of opinion as to the measure of that wealth. The Southern members seriously contended, that the most accurate measure was the number of freemen; that slaves were property only, and no more a standard of wealth than cattle or other property; while the Northern members contended, that the whole number of inhabitants was the better measure; because, although slaves were property, they were productive labourers, and the labour of a country was the surest measure of its wealth. A member from Virginia suggested, that the labour of two slaves was not more than equivalent to the labour of one white man, and proposed that two slaves should be counted as one, in the apportionment of taxes:—And a member from Pennsylvania, Dr. Witherspoon, was of opinion, that the best measure of the wealth of a nation, was the value of its lands and houses. On the question of Suffrage, the smaller States insisted, it was due to their independence, and essential to their preservation, that they should each have an equal vote with the larger States, while the larger contended, that the vote of each State should be proportioned to the numbers represented in each, or if not, to the amount of their contributions. Mr. Wilson of Pennsylvania thought “that taxation should be in proportion to wealth, but that representation should accord with the number of freemen.” These articles of confederation having been debated from time to time for two years, were adopted in July, 1778, making the value of lands and houses, the standard of contribution from the several States, and giving to each State an equal vote in Congress; the larger States thus surrendering their claim to power, as the price of that union which was indispensable to success to the common cause, in which the interests of all were embarked.

Experience soon demonstrated, that however just the standard of contribution which had been adopted, it was too expensive and inconvenient for political purposes. Remonstrances were presented against it, which resulted in a resolution of Congress to propose as a substitute for it, the apportionment of contributions, according to the federal number, in which the labour of five slaves is regarded as equal to the labour of three free men. This resolution was adopted in April 1783, and a committee consisting of Mr. Madison, Mr. Ellsworth, and Mr. Hamilton, was appointed to address a communication to the several States recommending it with other amendments to their adoption. In their address to the States, the Committee thus speaks of it: “This rule, although not free from objections, is liable to fewer than any other that could be devised. The only material difficulty which attended it, in the deliberations of Congress, *was to fix the proper difference, between the labour and industry of free inhabitants and of all other inhabitants.* The ratio ultimately agreed on, was the effect of mutual concession.”

The substitute had been approved by eleven out of the thirteen States, but the concurrence of the other two not having been signified, and unanimity being necessary, it does not appear to have been adopted as an article of the confederation.

When the Federal Convention assembled in 1787, and had agreed to transfer to Congress the exclusive power over imposts and duties, almost the whole power of indirect taxation—there seems to have been no difficulty at all in regulating the proportions in which direct taxes should be levied in the several States. The Federal number, as recommended by Congress, and approved by eleven States, gave the obvious rule of apportionment, and I believe it was adopted without opposition. It was, however, an arduous task to regulate the power of the several States, in the new Government. Here arose the delicate and difficult questions, between sovereigns having equal rights, claiming equal power, but possessing unequal numbers, and unequal wealth:—The smaller States preferred again their claim to equal power—the larger, their's to a just apportionment; and among themselves, they differed as to the rule of apportionment, whether according to the whole number of inhabitants, the number of free inhabitants, or the amount of contributions. These conflicting claims, after protracted debate, presenting difficulties which threatened entire abortion to all the labours of the Convention, resulted in compromise. Mr. Wilson of Pennsylvania, who, in 1776, had expressed the opinion, that, while taxation should be in proportion to wealth, representation should accord with the number of freemen, proposed as the basis of representation in the House of Representatives, the Federal number, and recommended it, as having been approved, by eleven of the thirteen States, as the proper measure of contributions. It was acceded to by a majority, and submitted to by all, when the small States had been conciliated, by a provision, that each should have equal power in the Senate.

It is manifest, from this review, that the ratio of representation in Congress, was adjusted less upon considerations of what was just and right, in relation to the persons represented, or of what was wise and proper, for the protection of property, than upon principles of concession and compromise—and it follows, that the example cannot be proper for our imitation, till that day shall arrive; which, may God, in his mercy, forever avert!—when the large districts of our State, having separated from each other, and formed independent Governments, shall have sent deputies to form for them, a Federal Constitution.

That the apportionment of representation according to Federal numbers was not intended to afford protection to the slaves of the Southern States, is plainly to be inferred from the utter inadequacy of the means to the end. It could afford no such protection, because it left the five Southern States, the principal slave-holders, in a decided minority, in the House of Representatives, while they were in a still smaller minority in the Senate. The protection to that property, from the power of Congress, is to be found, in the absence of all authority to legislate concerning it, except by the imposition of taxes, and in the restraint upon the power to lay any capitation or other direct tax, unless in the proportion of the Federal numbers.

The provisions of the Constitution of the United States do not warrant the conclusion, that it was intended to apportion representation, in the popular branch of the Legislature, to the contributions of the respective States. The contributions of the States are drawn essentially from imposts and duties, and there is no attempt to apportion representation to them. It was manifest that the revenue from this source would furnish the ordinary income of the Government, and that direct taxes would be the subject only of occasional resort. Yet the representation is the same whether direct taxes are levied or not. In truth, direct taxes and representation are not apportioned to each other; they are only referred to a common standard, the Federal number, which is to govern the one always, whether the other exist or no, and govern that other casually when called into existence.

But suppose it conceded, that it was the object of the Federal Constitution to apportion representation and contributions, to each other; and conceded, moreover, that such apportionment was right upon principle; is there nothing due to the consideration, that while to the General Government is committed the conduct of our external relations alone, the State Governments have charge of all our internal affairs—while the Federal Government acts in the general upon great and common interests, and upon large masses, the State Governments act upon the minor sub-divided interests and upon each individual, in every relation which he bears to society? Is there no fair inference from this consideration, that while a representation apportioned to taxes, might fairly embody the public will, in the Federal Councils, and give sufficient protection to the various interests on which they act; a representation in proportion to the number of free men, might be required in Virginia, to express fairly the will of her people, to represent and protect all the various interests on which her Government continually acts?

The Constitutions of Massachusetts, New-Hampshire, South Carolina and Georgia, are referred to, as furnishing examples of a representation of property in Republican Governments; and the gentleman from Orange, (Mr. P. P. Barbour,) particularly commends to our attention the experience of Massachusetts, who, after thirty or forty years' trial of her Government, has approved this representation, by refusing to alter it, at a late revision of her Constitution. In Massachusetts, the representation in the Senate is based upon the ratio of taxes, with a provision that no district shall send more than six members; and in the House of Representatives, it is based on the number of taxable polls, each election district being entitled to one for the first one hundred and fifty polls, and one in addition for every two hundred and twenty-five above that number. The election districts are large, and have become populous, so that each is now entitled to many representatives—Boston, for example, to about seventy. But the districts are not required to elect the whole number; each sends such proportion of its whole delegation as it thinks proper—and generally they send but a small proportion of them. It is this Constitution which the experience of Massachusetts has not induced her to alter. Would any gentleman recommend the constitution of both branches of her Legislature, as a model for our imitation? Would he give to our election districts the power of electing from one to seventy members, as they thought fit? If he would not be governed by the experience of Massachusetts, as to one branch of her Legislature, why should he desire us to be governed by it, with respect to the other? But if we are to be governed by it, what does it teach us? Surely, not that a check upon the power of the people, should be introduced into the popular branch of the Legislature, by giving representation to property there; but that such check should be introduced into the Senate: it teaches us to reject the amendment of the gentleman from Culpeper, which it has been invoked to support.

The Constitution of New-Hampshire is similar to that of Massachusetts, and requires no particular commentary. That of South Carolina has been most relied on, as furnishing a more appropriate example. South Carolina, a slave-holding State, by her Constitution adopted in the year 1790, had a prescribed number of Representatives and Senators from each election district, not varying with the changes of population, and not apportioned thereto. In 1803, the constitution of her House of Representatives was changed, by introducing into it the precise compound basis, now proposed to us by the gentleman from Culpeper—the Senate was left as formerly, composed of a prescribed number of members from each election district. The precedent, as it regards the popular branch of the Legislature, seems to be in point, and how far we shall respect its authority, it is for the good sense of this Committee to decide. The slave population, I learn, abounded in the lower districts of South Carolina, as it does in the lower districts of Virginia; there, as here, the slave population was small in the Western districts, the white population rapidly increasing—its representation very unequal—the people of those districts insisting on a more equal representation—and the people of the Eastern districts fearing, that if the power passed into the hands of the Western people, their property would be endangered. The Eastern districts anticipating the time when they would not be able to resist the demands of the growing population of the West, and availing themselves of their great ascendancy in both branches of the Legislature, adopted the amendment which fixed the basis of representation in the popular branch upon the compound basis of taxes and white population. Their Constitution authorised amendments, by majorities of two-thirds of both Houses of the Legislature, at two successive sessions. It was by such a concurrent vote that this amendment was adopted, and there can be no stronger evidence of the ascendancy which at that time the Eastern districts had in the Legislature. That an overwhelming majority then, should have imposed such terms upon the minority, can, in my humble judgment, furnish no good reason, why the minority here should impose like terms upon a majority. But the subsequent history of South Carolina furnishes the strongest refutation of the argument which upheld the policy of this measure there, and now recommends it to us; for, notwithstanding this expedient of the compound basis, the political power, in the popular branch of the Legislature, has passed from the Eastern slave-holders to the Western freemen, and yet the Government proceeds in perfect harmony, and I am well informed, that danger to the property of the East, is in no wise threatened, and is no longer feared. Why then should danger be feared, from permitting the Western freemen of Virginia, to acquire political power in the popular branch of the Virginia Legislature?

By the Constitution of Georgia, adopted in 1798, their Senate is composed of one member from each county, and their House of Representatives has a graduated representation based upon the Federal number. How this operates in the practical distribution of power, or upon the interests of society, we are not informed. We cannot therefore appreciate the example.

But, if this question were tried by the example of our sister States, surely the weight of authority would greatly preponderate against the limitation which is proposed, upon the power of the free inhabitants. Among the slave-holding States, while Maryland and North Carolina have a county representation without regard to numbers, Louisiana has its House of Representatives apportioned according to the qualified voters, and a Senate with fixed numbers from prescribed districts—Kentucky, its representatives apportioned to the qualified electors, and Senate to the free male inhabitants above twenty-one years—Mississippi has representatives apportioned to free white inhabitants, her Senators to the free white taxable inhabitants—Alabama has both Houses based upon free white inhabitants—Missouri, both based upon free white male inhabitants—and Tennessee upon the taxable inhabitants—that is, as I am well informed, free inhabitants, on whom taxes may be imposed. Here are six slave-holding States, in most, if not all of which, the slave population is very unequally distributed. In none of them has it been deemed necessary to protect their slaves by restraints on the power of the free inhabitants, and in none of them do we learn that there has been the least cause to apprehend any danger to this property from the exercise of that power. Of these States, Kentucky and Tennessee has each had between thirty and forty years' experience.

In States where there are no slaves, and where political power is distributed among the different districts essentially in proportion to the number of inhabitants, we have the examples of Pennsylvania, New-York, Ohio, Indiana and Illinois, in which there has been no attempt to guard property by giving it representation. In the old Constitution of New-York, there was a distinction made between the qualification of voters for members of the two Houses; a higher property qualification being required for the voter in elections to the Senate; but this has been abandoned in the recent change of their Constitution.

I profess, however, Mr. Chairman, to pay but little respect to any of the examples from the Constitutions of our sister States, quoted on the one side or the other. None of them can be very well understood by us; all of them have been subjected to the test of but a span of time, compared with the life of nations; and all of them are taken from the infancy of our institutions, where our sparse population, the facility of acquiring property, and our agricultural pursuits, secure to us more virtue, and more freedom from temptation, than, in future times, we can reasonably hope to enjoy.

Having disposed of the precedents which are supposed to bear on the question in debate, let us consider the two propositions with reference to their practical operation—and in approaching this subject, I must express my deep regret at the appeal which has been made to the spirit of party politics. We are told by the gentleman from Chesterfield, that one of the objects of this Convention is to change the policy of this State in reference to the measures of the General Government; and he has endeavored to alarm the party politician, with the apprehension that his favorite doctrine of State Rights would be endangered, by a transfer of power from the East to the West. Mr. Chairman, has not the subject under consideration intrinsic difficulties enough? Are there not prejudices, naturally, perhaps inseparably belonging to it, which present almost insuperable obstacles to candid discussion, to just and wise conclusions respecting it? Shall we, by invoking the demon of party spirit, multiply these difficulties, inflame these prejudices, bring discord into our ranks, and confusion to our councils? Has it come to this—that public opinion is to be controlled, by retaining political power in the hands of the minority? Do our brethren of the East mean to deny us freedom of opinion respecting the affairs of the General Government? Do they insist upon the privilege of thinking for us, as well as legislating for us? The generous feelings of my friend from Chesterfield, when the excitement of ardent debate has subsided, will disclaim, I am sure, all aid from blind party zeal; and I trust that this Committee will not for a moment submit to its influence.

It has been objected to the resolution of the Select Committee, that by transferring the power to the West, it will endanger the basis of representation in the House of Representatives of the United States; that is to say, that if the basis of white population should be established for the House of Delegates, the people of the West, following the precedent, will insist on arranging the Congressional districts in this State upon the same basis, instead of the basis of Federal numbers, upon which they have heretofore been arranged. I do not believe, Sir, that any such danger exists; the propriety of arranging the Congressional districts upon the Federal basis is so obvious, and has been so long practised, that I do not believe the change would ever be attempted. But if you fear it, provide against it in the Constitution, by an express declaration that the Federal number shall forever govern in arranging these districts. But the gentleman from Fauquier tells us, he does not know that such a provision would be regarded as obligatory; he does not know but that the Constitution of the United States would be appealed to as paramount to the authority of the State Constitution on this subject. Does the gentleman from Fauquier entertain the least doubt that such a provision in our Constitution would be obligatory? Can he doubt that the State Legislature is imperiously bound by the State Constitution, in all things not contrary to the Federal Constitution? And can he find any thing in the Constitution of the United States upon which to rest a doubt, that it is lawful to prescribe that the districts for electing members to Congress, shall be formed upon the basis which the Constitution of the United States itself has established for the whole representation of the State. If we are to be driven from the path of duty by such scepticism, our labours are at an end; for, why prescribe a qualification of suffrage? The gentleman from Fauquier does not know that in this age of metaphysical abstraction, it will be held obligatory upon the people. Why prescribe any basis of representation at all? The gentleman from Fauquier does not know that the Legislature will hold it obligatory upon them. Let us not, Sir, deliver ourselves up to the blind guidance of what we do not know; but rather let us be governed by what we do know, or might know, if we would consult our reason. We ought to know, that it is our duty to settle this question of representation without influence from imaginary dangers. We ought to know that the Legislature of Virginia would never incur the risk of losing its whole representation in Congress, by electing all its members in direct violation of the State Constitution; that they would never incur the reproach of mankind by so palpable a violation of duty.

We are threatened with another danger, in relation to the Federal Government, from adopting the basis of white population. We are told that if Virginia, the largest Southern State, disregards her slave population, in apportioning representation in the State Legislature, it will weaken the argument, by which the Southern States support their right to representation for that property, in the Government of the United States, and may endanger the loss of power, which that representation gives us.

It should be recollected, that the power which this population gives us, in the General Government, does not rest upon argument, but upon compact—was not allowed us upon principle, but upon compromise—and cannot be taken away from us, but by a total departure from the spirit of the compromise and an amendment of the compact agreed to by three-fourths of the States, in the Union—and the gentleman from Loudoun (Mr. Mercer) has shown how utterly impracticable any such amendment would be. But, Sir, this argument, that the slave population was not regarded in the representation of those States where slavery existed, was in full force when the Constitution of the United States was adopted—it was then urged and repelled. The argument is noticed, in the fifty-fourth number of *Publius*. The fact on which it rests is admitted, and the argument ably repelled by a clear exposition of “the compromising expedient of the Constitution”—“which regards the slave as divested of two-fifths of the man.” By adopting the basis of white population, then, we furnish to our adversaries no new and fearful argument—but we leave the old refuted argument in the quiet grave which has covered it for forty years.

We come now to consider this question, with reference to the protection of property. By adopting the basis of white population, shall we expose to danger that peculiar property, in which the Eastern districts have so deep an interest? I am perfectly satisfied, Mr. Chairman, that you would more effectually protect this property by granting us the simple basis, than by imposing on us the compound basis, proposed by the gentleman from Culpeper. Let us attentively and impartially examine this question.

The whole danger apprehended, rests upon the supposition, that the basis of white population will carry the power of the Government into the hands of those, who will be, comparatively, but little interested in this property: And if it can be shown, that this supposition is not correct, then it must be admitted, that the danger is unreal. I do not believe that it is correct—and will submit to your candid consideration, the reason of that opinion.

I have already shown you, that taking the Auditor's estimates of the present population, and apportioning the representation according to the whole white population, there would be a majority of eight members in the House of Delegates, on the East of the Blue Ridge; and apportioning it according to the qualified voters, there would probably be a majority of twenty. If the basis of qualified voters should be adopted, there is no definite period of time, within the present century or the next, at which any person could say, with confidence, that this majority of twenty would be overcome, by the increasing population of the West. Indeed, it is very doubtful whether the majority of qualified voters will ever be West of the Blue Ridge. Any one, who will carefully examine this subject, in his closet, with reference to the tables of population; the number of square miles in each district; the quantity of mountain and arable land in each; their capacity to sustain population; their distance from market; the probable growth of their towns; the pursuits of their people, whether commercial, manufacturing, or agricultural; planting, farming, or grazing; will, I think, be satisfied, that if that time should ever come, it is too distant to have the least influence on our deliberations.

The period is not so distant when the majority of the white population, will probably be West of the Blue Ridge; but when that period will arrive, is exceedingly uncertain. The tables of population show us, that the relative increase of the different districts, heretofore, has been very irregular; and we shall find our calculations of their future increase, in a great measure conjectural. The ratio of increase of the white population, from the year 1790 to the present time, appears by these tables, to be as follows:

In the first district, from	1790 to 1800	83 3-4 per cent.
	1800 to 1810	47 per cent.
	1810 to 1820	27 1-2 per cent.
	1820 to 1829	36 1-5 per cent.
In the second district, from	1790 to 1800	20 per cent.
	1800 to 1810	3-4 per cent.
	1810 to 1820	11 3-4 per cent.
	1820 to 1829	14 3-4 per cent.
In the third district, from	1790 to 1800	11 1-2 per cent.
	1800 to 1810	1 per cent.
	1810 to 1820	3-4 per cent.
	1820 to 1829	5 3-10 per cent.
In the fourth district, from	1790 to 1800	2 per cent.
	1800 to 1810	1-4 per cent.
	1810 to 1820	5 1-2 per cent.
	1820 to 1829	2 2-5 per cent.

Thus you see, that in the Western district, the ratio having decreased between the years 1790, and 1820, from 83 $\frac{3}{4}$ per cent. to 27 $\frac{1}{2}$ —appears by the Auditor's estimate to

have risen in the last nine years, to 36 1-5 per cent. which is equivalent to 40 per cent. for ten years—this may be owing to some error in the Auditor's estimate, or it may perhaps be accounted for, upon the supposition that emigration from that district diminished, within the last nine years, and migration to it increased. It is certainly, however, not according to the usual course of things, that the ratio of increase in a newly settled country should rise, as the population becomes more dense.

You will observe, that the Valley district having remained nearly stationary for ten years from 1800 to 1810, increased 11 $\frac{1}{2}$ per cent. for the next ten years, and 14 2-5 per cent. for the last nine; that the middle district remaining nearly stationary for twenty years, from 1800 to 1820, appears to have increased upwards of 5 per cent. for the last nine; and that the tide-water district being nearly stationary for twenty years from 1790 to 1810, increased in the next ten years 5 $\frac{1}{2}$ per cent., and in the last nine, about 2 $\frac{1}{2}$ per cent.

There can be no doubt, that these irregularities proceed in a great degree from the difference of emigration from all the districts in the State, fast diminishing, as the Western States and territories are becoming populous, and Western lands rising in price. The time, therefore, is probably not distant when the increase of our population will be left chiefly to its natural causes, and when the ratio in each district will be nearly the same.

I have made a calculation of the probable white population of the several districts, in the year 1850, upon the supposition, that the Auditor's estimates are correct, that the Western district will increase 20 per cent. for the next ten years, and 10 per cent. for the succeeding ten; that the Valley district will increase 10 per cent. for each period of ten years; and that the two Eastern districts will increase 5 per cent. for each period of ten years. The result of this calculation is, that in the year 1850, the white population of the Western district, would be about 234,000—that of the Valley 167,000—of the middle district 217,000—and the tide-water district 175,000—giving to the West of the Blue Ridge, about 496,000, and to the East, about 395,000. This I am persuaded is a calculation more liberal to the West than they are entitled to, and it results in giving them a small majority of white population in 1850. From thenceforward they can have no reason to expect that their population would increase more rapidly than that of the East. Look for a moment at the comparative extent of the two districts, and at some of the causes which would affect the increase of their population.

The two districts West of the Blue Ridge, contain 35,886 square miles:—the two East of the Ridge, contain 25,774 square miles. Considering the vast extent of mountains beyond the Blue Ridge, it would be giving to the West a most liberal estimate of its arable lands, to suppose them equal in quality to the arable lands East of the mountains. Reflect, then, on the circumstance, that the whole lands of the East must be always employed in planting and farming, while a very large proportion of those of the West, the whole extensive district from the North Mountain to the Western boundary, with the exception only of those narrow valleys which lie convenient to the navigable waters, must for ages to come, be in the hands of the grazier:—recollect too, that if we should ever have large towns and extensive manufactories, they will seek the marts of foreign commerce, and probably be found about the falls of the Eastern rivers—and I think you will find strong reason to believe, that the Eastern side of the mountain will always maintain a greater population than the West, and can never be much inferior to it in white population.

I have heard it said, that the Eastern districts contain already, nearly as much population as they could sustain. Nothing can be more erroneous. The middle district, counting all its inhabitants, has a population of about twenty-eight, and the tide-water district, a population of about thirty-two, to the square mile. Compare this with the population of older countries. In 1811, Scotland had a population of about sixty-four—Wales, seventy-nine—England, one hundred and ninety-six, to the square mile—France, about the beginning of this century, had a population of one hundred and seventy-nine, to the square mile. Can any one doubt, that the country between the Blue Ridge and the ocean, is capable of sustaining more population than Scotland or Wales:—and can any good reason be assigned, why it may not be as populous as England or France?

If I am right in my estimate of the future progress of white population, and we can be satisfied, that in the course of twenty years, there will be a few populous counties beyond the mountains, essentially slave-holding counties, having a kindred interest with the East, in the good government of that property, and its exemption from unjust burthens, then you have assurance that the basis of white population will not carry the power of the Government, into unfriendly hands.

Referring again to our tables, we find that the tide of slave population has been setting strongly to the West, and that it is now swelled to its greatest height, at the very base of the Blue Ridge: That in due time, it will find its level through the passes of that mountain, there can be little reason to doubt. We have seen by

how much the slave population exceeds the white population, in the two Eastern districts, and by how much it falls short, in the two Western. Let us now see what has been the ratio of increase, from 1790, to the present time. It stands thus :

In the first district, from	1790 to 1800—138 per cent.
	1800 to 1810—65 1-2 per cent.
	1810 to 1820—46 per cent.
	1820 to 1829—28 1-2 per cent.
In the second district, from	1790 to 1800—40 1-2 per cent.
	1800 to 1810—31 1-4 per cent.
	1810 to 1820—25 1-2 per cent.
	1820 to 1829—12 1-5 per cent.
In the third district, from	1790 to 1800—28 1-2 per cent.
	1800 to 1810—20 3-4 per cent.
	1810 to 1820—10 3-4 per cent.
	1820 to 1829—7 7-10 per cent.
In the fourth district, from	1790 to 1800—6 1-4 per cent.
	1800 to 1810—4 per cent.
	1810 to 1820—1 1-4 per cent.
	1820 to 1829—loss of 13-100 of one per cent.

You find then, that, while in the tide-water district the slave population is rather decreasing, it is increasing in the middle district by a much smaller ratio than in the Valley and the Western districts. You perceive too, until within the last nine years, the increase in the Valley and Western district has been very rapid. A strong reason why, within that time, the increase has not been so great in those districts, may be found in the depressed prices of agricultural products. For the last ten or twelve years, the products of the farming districts have scarcely been of value sufficient to justify their transportation to distant markets. In consequence of this, farmers of the Valley, and no doubt of other Western districts, have become graziers, and the labour of slaves has been less in demand. The price of tobacco has been better sustained than the price of other agricultural products—it better bears the expense of transportation to market; and this has kept up the demand for the labour of slaves, in the planting districts of the middle country. This too, is fostering the culture of tobacco in some of the Valley counties, where it is grown of fine quality, and to much advantage; and will, no doubt, extend its culture very considerably in the Western districts. As the demand for slaves in the Southern States of the Union diminishes, and their laws restraining the importation of them, become more rigid—as the tobacco lands of the middle district decrease, and the tobacco culture in the Western districts is extended; and as the products of the farming districts shall become more valuable; the demand for the labour of slaves will diminish in the middle districts, and increase in the Western; the price of them will become lower, the Western man will be more able to purchase them, and the Western country will be sure to possess them, in large numbers. In Rockbridge, where the culture of tobacco has been lately introduced, the slave population has increased about 33 1-3 *per cent.* in the last nine years, and in Botetourt, where the plant has been longer and more extensively cultivated, the slave population has increased more than an hundred *per cent.* in the same time. These two counties together, have a white population of 20,927, and slave population of 7,592. It cannot be doubted, that in twenty years, they will be essentially slave-holding counties; and their white population, added to that of the East, in the year 1850, will cast the balance of power decidedly in its favour. But many other counties of the West, and among them, the rich and populous counties of Frederick and Jefferson, under the influence of the causes I have referred to, must, in the course of twenty years, have so strong an interest in the slave population, as to insure their co-operation in its protection. Nearly one-third of the population of these two counties is, at this time, slaves. Their aggregate white population is upwards of 27,000; their aggregate slaves, upwards of 11,000.

These are some of the reasons which have satisfied my mind, that the power of the Government, under the influence of the basis of white population, will abide with the slave-holders.

But, suppose I should be mistaken; suppose the ratio of white and slave population to continue as it is, and that the basis of white population would transfer the power of the Government to the West, would you secure protection to the interests in the slave property, by rejecting this basis, and imposing on us the compound basis? I think not.

If by conceding to the Western people, a right which has been so long, and, as they think, so injuriously withheld from them, by this manifestation of generous confidence in them, by thus acknowledging them really as brethren, equal with you in right, you could not inspire a feeling of affection and sentiment of justice, on which some reliance might be placed; if you could not trust to their general though deep

interest, in maintaining the rights of property, and the peace and good order of society; if you could not accept the justice of your own Government, your own forbearance to invade their property for more than fifty years, as evidence, that they too will govern justly, and will respect your property; if you must act upon the distrust, which the known frailty of human nature prompts, upon the apprehension, that large masses of men, acting together, cannot resist the temptation of large masses of property, exposed to their power, then, there are other considerations which deserve your most serious attention.

Let it be once openly avowed and adopted as a principle of your Constitution, that the price which the Western people must pay for the protection of your slaves, is the surrender of their power in the Government, and you render that property hateful to them in the extreme, and hold out to them the strongest of all possible temptations to make constant war upon it, to render it of no value to you, and to induce you to part with it. A large district of your country, marked out by a geographical line, containing a large minority of the freemen of the country, and expected soon to contain the majority; having a large representation in both branches of your Legislature, where its voice can be constantly heard, and its complaints will be perpetually poured forth; this district is to be placed under the ban of the Empire, and its people to be told, that your slaves exclude them from the pale of authority. I will not say, you will madden them into acts of violence or disloyalty, by such a measure—I believe it not—the people of the West, though zealous and persevering in pursuit of their rights, are in general an industrious and contented people, as obedient to the law, as prudent and as loyal as any people under the sun. But will you not make them zealots on that subject, on which your right of property depends, and which is so intimately connected with your domestic peace? Will you not drive them to seek allies among your own people, associates in the measures, which are necessary to remove the obstacle that stands in their road to power?

Unless I am deceived, very grossly deceived, Mr. Chairman, they would find many and ardent auxiliaries, in the bosom of your own society. How many are there, who owning none of this property, and doomed to the laborious offices of life, feel a sort of degradation in being compelled to perform them in common with the slave, and a sentiment of envy towards their owners? How many who professing conscientious scruples, are even now continually propagating doctrines, which tend to insubordination? Remember too, Sir, that the Right of Suffrage will be extended. How many of this class of auxiliaries, will be brought to the polls by this extension, remains yet to be known. But I put it to the sober judgment of the Eastern Statesman to say, whether he can feel security against the combined action of the whole Western country, and all the discontented of the East, when you shall have established the compound basis, and materially extended the Right of Suffrage? Sir, nothing in my estimation can be more unwise, or threaten more serious mischief, than the united operation of these two causes. You cannot with safety extend the Right of Suffrage materially, and force upon us the compound basis.

But, if the evil I have hinted at should not follow, what then? Will the people of the West sit down tamely under the privation of even a portion of the power which they now enjoy? Will the majority of the freemen of the country, who share the political power, acquiesce in the rule of the minority, under the persuasion that while the minority would have virtue and wisdom enough to protect the property and secure all the rights of the majority, that majority could not be trusted with power over the property of the minority? This is impossible. A Constitution founded upon such a principle would not last ten years. There would be no rebellion, no civil war, no blood-shed. The peaceful remedy is in the hands of the people, and they will employ it. You do not mean to disavow the doctrine, that the majority may reform the Constitution. You have already, by an unanimous vote, sanctioned this doctrine in agreeing to the resolution, that the Bill of Rights required no alteration. Your new Constitution then is to be sent forth, with a proscription against the majority, and with an invitation to the majority to alter, reform or abolish. Will not this invitation be most certainly accepted? The qualified voters, with the increased power which the extension of the Right of Suffrage will give them, will make themselves heard at the polls, and heard in your halls of legislation. Do not flatter yourself, Sir, that your majorities in the Legislature can resist the petitions of a dreaded majority, earnestly pressed, and long persevered in. Your new voters will sympathise with them and not with you—they will owe their power principally to the people of the West, and they will not regard your power as necessary to their protection. If your own constituents do not take part against you, nevertheless, you will be compelled to yield, as the Legislature has heretofore yielded to the force of public opinion—and another Convention will be called to do that which you now refuse to do. The surrender of your power may then come too late, to allay the animosities which the protracted controversy will have inflamed, heal dissension, soothe

wounded feeling, inspire confidence, and cement the bond of union among the people of the Commonwealth.

Why then will you persist in contending for that which it is so hazardous to possess, so impossible to retain? Better, far better is it, in my humble opinion, to turn your attention to that which is practicable, safe, enduring and effectual—to the prudent limitation of the Right of Suffrage. This is a ground on which we could meet and confer together, I should hope, with some prospect of settling at once the basis of political power, and the mode of apportioning it. Let the qualifications of suffrage be judiciously defined, and the basis of representation be the ratio of qualified voters. I have shown you how such a provision accords with the principles of our Government, how mildly it would operate in the distribution of power, how perfectly secure it would leave our rights of property.

It is to the qualifications of suffrage, Mr. Chairman, that we must look for the essential character of our Government, for the security of all our rights, and especially for the protection of our property. Hold in steady view the word and the spirit of the Bill of Rights—admit to the enjoyment of political power, those, and if possible those only, who “have sufficient evidence of permanent common interest with, and attachment to, the community”—and you have the best security that we can devise for the protection of our property and our rights—you have the bond which gentlemen have demanded, founded in self-interest and self-love. I am not so visionary as to suppose, that human wisdom can devise a rule of suffrage, which would include all, who have, and exclude all, who have not, the requisite interest in the community and attachment to it. But there can be no doubt, by a careful attention to the circumstances, which indicate *permanency* of interest, *community* of interest, *attachment* to the country, much might be done, to exclude the unworthy, and to commit the political power, to the great body of the people, who must look to the good government and prosperity of the country, for the prosperity and happiness of themselves individually, their families and their posterity. Let your qualification of property be fixed with no view to aristocratic pride and distinction; let it be fixed so low, that the industrious of all classes, professions and callings, may acquire it in a few years of persevering labour; and so high as to be out of the reach of the habitually idle, who in all stations of life, are habitually worthless. Whether it be of real or personal property—real I should prefer—let it be certain, simple, easy to understand, and convenient in practice. Such a safeguard for property, as this, would be permanent; it would not array the great districts of your State against each other; and could not produce any serious discontent. What excluded class would oppose it? Not our slaves—their masters will keep them better employed; nor our children—the discipline of the rod, will secure their allegiance; nor our daughters—Heaven bless their maidenly modesty!—they would not for the world be suspected of desiring power; nor our wives, who would be perfectly contented, that their husbands should give their votes for them; nor yet those, who are no longer wives; for they will have been taught, in Heaven’s best school, the vanity of human power, and the necessity of seeking happiness in devotion. No other classes, but the aliens and free coloured, are excluded, and from them, nobody has any apprehension. All besides who are excluded, are individuals belonging to all classes, who are for the time without the requisite qualification. The industrious young man, whether a cultivator of the soil, a merchant or mechanic, whether lawyer, doctor or divine, who is engaged in laying the foundations of his fortune, and who looks with confidence, as every industrious man in this community may, to the time when he shall have acquired a comfortable subsistence for himself and his family, and with it the qualification of suffrage—can he now complain that he must for a few years submit to that exclusion which has been deemed necessary to secure him the profits of his own labour, the protection of the property he is endeavoring to acquire? The sons of freeholders, who have not yet come to the possession of the estates which their fathers have in keeping for them, and have earned none of their own—they surely cannot complain, that while they depend upon their fathers for property, they should depend on them also for its government. Can the imprudent or the unfortunate, who have lost their property, and with it their right of suffrage, complain that they are not permitted to participate in the management of public affairs, when they have been so unsuccessful in the conduct of their private estates, as to be left without the qualification of a voter? With still less reason, could the idle man, whether young or old, who had acquired no property, and was pursuing no means to acquire any, complain that he was not permitted to share in the government of that society, to which he contributed nothing better than the evil example of his bad habits. It is very manifest, that among all these various descriptions of excluded persons, there could be no bond of sympathy, no union of action—and that from their discontents, if they had no rallying point of real grievance, no organized corps of dissatisfied voters to conduct their opposition, society would have nothing to apprehend.

There is but a single point of view in which the connexion of the basis of representation with the Right of Suffrage, as I have suggested, would seem to threaten mischief. If the qualified voters in the several districts were made the standard of their power, the extension of the Right of Suffrage, as it would probably vary the ratio of qualified voters, might become a question of power between the different districts. I have been fully aware of this consequence, and it induced me to hesitate in proposing the connexion. But I have been encouraged to hope that this very expedient may be made the means of settling the question of suffrage here more satisfactorily than it could otherwise be settled. And if adjusted here to the satisfaction of both parties, I should have no fears of future consequences. No general discontent could possibly be excited among the people upon this subject—at least not for years to come. The influence of the extension of the Right of Suffrage, upon the relative power of the several districts, will diminish hereafter, in the exact proportion, that the slave population shall become more equally distributed through the State—and if I am right in my calculations upon this subject, the extension of the Right of Suffrage, as a question of relative power, will be every day losing its interest. I should hope then, Sir, that this question would engage the serious attention of gentlemen on both sides.

Mr. J. proceeded to discuss the subject of internal improvements, but being much fatigued, he gave way to a motion of Mr. Stanard for the Committee to rise, (Mr. J. stating that he should scarcely expect to detain the Committee more than fifteen minutes on the following day.)

The Committee rose, and immediately on Mr. Leigh's motion, the Convention adjourned.

FRIDAY, NOVEMBER 13, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoornor of the Catholic Church.

Having again resolved itself into a Committee of the Whole, Mr. Powell in the Chair,

Mr. JOHNSON resumed and concluded his speech in favor of the resolution reported by the Legislative Committee, and in opposition to the amendment of Mr. Green, proposing a mixed basis of representation. He said, that

Another subject, on which gentlemen express great apprehensions of danger, from transferring the power of the Government to the majority, is that of internal improvements. They fear that expensive schemes of improvement will be adopted, in which the Eastern districts have little, if any interest; and which, if successful, will be principally beneficial to the West, while the expense will be chiefly defrayed from taxes levied in the East.

In considering this question, Mr. Chairman, I do not feel myself at all called upon to vindicate the Western people from any imputation upon their motives or character. If any such had been made, it would have been so entirely gratuitous, that it could not have required an answer. But none such has been made. Gentlemen have explicitly disclaimed all personal distrust of the Western people—all imputation upon them. They have reasoned from the known character of man, from the ordinary motives and influences of human action. The correctness of their reasoning alone I controvert; its candor and liberality I cheerfully admit. I do not believe that the danger apprehended exists, nor do I think that if it did, it would be avoided by the means proposed.

I do not hesitate, in the outset, to avow myself a decided friend of the policy of internal improvement; not, Sir, a system of internal improvement forced upon us by the Government of the United States, without our consent, and without our authority—a system less suited perhaps for making roads and canals, than for making Presidents and Secretaries—less used for the purpose of facilitating transportation from one part of the country to another, than for the purpose of transferring popularity from one set of politicians to another. I advocate the policy of internal improvement conducted by our own internal Government, for the *bona fide* purpose of lessening the expense of transportation, facilitating the intercourse between distant places, increasing the value of our property, and with it the wealth and resources of the State. I am no friend of any system conducted, no matter by what authority, which robs one man's purse to improve another man's land. I think that no improvement ought ever to be undertaken, unless the local districts immediately benefitted by it will bear a tax, in the form of tolls or otherwise, adequate at least to pay a reasonable interest upon the money expended in its execution; and that Government ought never to advance its money or credit for the purpose of such improvement, without the best assurances that such return can be made, and exacting an adequate toll on transportation,

or tax upon the district. With these limitations, which, cautiously observed, would guard every part of the State from unjust burthens, I think that the best interests of the country require the patronage of the Government, in the improvement of its roads and rivers.

The policy of internal improvement, Mr. Chairman, is not an invention of the West for enriching themselves, and impoverishing their neighbours. It is the policy of the Statesman and the Patriot. It was recommended to us in Virginia, by the father of his country; and has found its most zealous and distinguished advocates, in the Eastern districts. When adverse circumstances had thrown it into some discredit, darkened its prospects, and damped the spirits of its friends—who, I ask, were foremost in their efforts, to vindicate its character and re-animate its hopes? Let the meeting at Charlottesville during the past year answer this question—a meeting invited by a voice from the lowlands, attended by a few members from the West, and many from the East of the Blue Ridge, whose presiding officer was the distinguished member of this Convention from the county of Orange, once the President of the United States, and among whose most active members were the President of this Convention, the Chief Justice of the United States, the gentleman from Chesterfield, and other very distinguished Eastern men, now members of this Convention.

Let us look on the map of the State and see what part of the country is directly interested in the policy of internal improvement. Its narrowest limits will be found prescribed, by the Potomac on the North, the Ohio on the West, the line of North Carolina on the South, and the head of tide-water on the East. Add to this extensive district the towns of Norfolk, Petersburg, Richmond, Fredericksburg and Alexandria, with the counties adjoining them, in which the direct interest is quite as manifest as in any other part of the State, and you leave but a very small district, not directly interested in this subject. But in truth, Sir, the interest of internal improvement pervades the whole Commonwealth. The tide-water country, which requires no improvement in its roads and rivers, has an important interest in the improvement of its markets. Whatever will increase the population, the wealth, the mercantile capital of their market towns, must enhance the value of every acre of their lands. And permit me to suggest, that under a prudent system of internal improvement, patronised by the Government, the benefits to the tide-water country, though they might not be so great, would be more certain, and the risk of loss less, than to the immediate district in which the improvement might be made. Suppose, for example, the Government to borrow the money necessary for completing the James river improvement, and to provide by law for a tax on the land, or a toll on the products of the James river district to meet the interest on the loan—in this case, the whole risk incurred by the tide-water country is, that the means employed to pay the interest on the loan may not be effectual—and this risk they encounter, in common with the James river district and every other part of the State. If the improvement should succeed, that would secure the means of paying the interest on the loan, and lay a sure foundation for the prosperity of their principal market town; and thus, without paying one dollar for it, the tide-water country connected with Richmond would enjoy the benefit of an improved market.

And what would the James River district enjoy? The benefit of an improved market, it is true, and of improved transportation—but subject to the tax necessary to pay the interest on the loan. It would depend entirely upon the comparative value of this tax, and of these benefits, whether the James River interest would be promoted or injured, by the successful improvement. If the tax were equivalent to the diminution of freight resulting from the improvement, then the James River interest would have gained nothing; if more than equivalent, it would be injured; and it would be benefitted only in the event, that the saving of freight would be more than equivalent to the tax imposed. This interest then would incur the double risk of loss—first, by the failure of the improvement; secondly, by having to pay for it more than it was worth. Apply this illustration to all our navigable streams which require improvement, to the towns connected with them, and the country interested in their markets, and you will perceive how essentially the interest in a well-conducted system of internal improvement, is an interest of the Commonwealth, and how unwise it would be to regard it as a partial interest, and to excite local jealousies concerning it. Considering it in this light too, you will acknowledge the injustice of regarding it as the means of taxing one part of the Commonwealth for the benefit of the other. Indeed, the very moment you adopt the principle of making the local districts pay the interest upon the expenditure, and hold their lands mortgaged for the payment, you secure from those districts the utmost practicable caution in all their plans of improvement; you make them as careful in accepting loans, as the State should be in granting them, and you give to the agency of the Government its true paternal character, employed in assisting the prudent and solvent members of its family in laying the foundations of their fortune.

But it is not to such a system that the objections of gentlemen on the other side apply. Most of them, I doubt not, would be its patrons. They fear the operations of a different system, one which, whatever might be its object, would result in throwing the expenses of every great improvement upon the State at large, while its profits would be partially enjoyed. Let us then examine whether this would be the probable consequence of adopting the basis of white population, and whether it would be avoided by the compound basis.

When danger is apprehended from the prevalence of local interests against the interests of the State, the most obvious inquiry is, whether any one local interest, or any combination of them, can probably command the power of the Government. Looking to the divisions of our State, with reference to the various interests in the subject of internal improvement, you will find the general interest guarded against the local power, by more natural ramparts, than were ever created upon the face of any country on earth, capable of half the improvement to which ours so strongly invites. It is this very capacity for improvement, the numerous objects which so strongly solicit it, that constitute the real difficulty in our system—and present almost an insuperable barrier to any improvement at all.

The country East of the Alleghany, and above tide-water, is divided into three great interests, the Potomac, the James River, and the Roanoke, and two subordinate; those of the Rappahannock and Appomattox, not to mention the yet smaller interest of the Pamunkey. The trans-Alleghany interest might be associated in part with the three greater interests in plans of very extensive improvement, but as to all minor objects would be sub-divided, with reference to its own navigable streams. An inspection of the map and the tables of population will show you, that the whole local interest, Eastern and Western, attached either to the Potomac, the James, or the Roanoke, upon any plan of improvement, however magnificent, will embrace less than one-third of the white population of the State—and so it must be forever. Neither, therefore, alone, could command the power of the Government—each would guard the Commonwealth against any improvident scheme which the other should espouse. It must then be from a combination of different interests, that any danger would be apprehended. Is such a combination probable?

That which would be most natural, perhaps, would be between the James and the Roanoke, because their principal market towns, Norfolk and Richmond, have commercial connexions, which might be advantageously extended. But such a combination is feared by nobody; it is in no wise probable, and if formed, its local interests would not embrace a majority. That which seems to be apprehended, and which is least improbable, is a combination between the James and Potomac. Is not this apprehension unfounded?

It ought to be remembered, that one of the most interesting objects of an enlarged plan of improvement connecting the Eastern with the Western waters, is the Western trade; that, in this object, the Potomac and the James would be rivals—and therefore, that combination between them would be less probable.

The vast expense of the two improvements, which should connect the James and Potomac, with the Western waters, would present another serious obstacle to the combination—an obstacle, which the known reluctance of the people of Virginia, to raise the taxes, or incur debt, would render almost insuperable. But suppose these obstacles removed, suppose the local interests of James River and Potomac prepared to lay down their rivalry and at every expense to seek the attainment of a favorite object, how then will stand the question of power?

Upon the basis of white population, the Western vote is estimated at fifty-eight. But of the Western country, the counties of Grayson, Montgomery, Wythe, Washington, Scott, Lee, Russell, Tazewell, Logan, and Cabell, belong neither to the James River nor the Potomac interests. Their population entitles them to twelve votes, which must be deducted from the fifty-six, leaving forty-four. To this add the vote of those counties on this side of the mountain which have hitherto espoused either the James River or the Potomac interest—Loudoun, Fairfax, Albemarle, Annerst, Nelson, Fluvanna, Goochland, Bedford, and Campbell; also the vote of the city of Richmond, in all thirteen, and you give to the combination the power of fifty-seven against sixty-three. It must then seek other alliances to be successful. Where will it find them? Will the South-Western counties that I have enumerated unite with them?

That bond of sympathy originating in a common feeling of common injury, which has heretofore given so much power to the Western vote, may unite them, unless you dissolve it, by adopting the basis of white population and causing every local interest to sympathise only with the interests of the Commonwealth. Do this, and there will be no better reason, why the South-Western counties should unite themselves with the James and Potomac, than there would be for such a union of the Roanoke counties; below the mountain.

Will the Appomattox or Rappahannock interests unite? This could only be on terms which would promise them the achievement of their objects of improvement; terms, which would swell the whole expenses still higher, and multiply the difficulties of success. And if this object is to be obtained, only by combination of this sort, it will be easy to show that the compound basis would be no security against them.

The compound basis, if any thing could, would carry the whole Western vote, in unbroken phalanx, upon this subject. I have elsewhere, Mr. Chairman, referred to the well known influence of this vote in the Legislature of Virginia; and this reference has been treated here as a threat used to influence the proceedings of this Convention. Never was the meaning of any one more entirely misconceived, if it has been thought for a moment, that I referred to the influence of the back-woods vote, with any the remotest intention of holding it *in terrorem* over the members of this Convention. Sir, I mentioned it, with far different motives—and it is wonderful that they should not have been understood. I mentioned it as an evil, which it was desirable to remedy—as the natural effect of that sense of injustice, which the Western people had so long felt, as a reason for believing, that an attempt to deprive them of power, by denying them their just share in the representation, would on many occasions defeat its own object, as it might give more power to their concert than you had taken from their numbers. If I had believed that there was a single member of the Convention, capable of being influenced by such an appeal to his fears, I would have disdained to address myself to him. But, I repeat, Sir, that if there is any thing, which could unite the whole Western vote, in favor of the combined scheme of improvement, which we are now considering, it would be your compound basis.

Suppose them thus united—the Western vote upon the compound basis, is forty-three—the vote of the nine Potomac and James River counties, on this side of the mountain, would be sixteen—that of the city of Richmond, nearly three—making in the whole sixty-two votes, a small majority. If the ten South-Western counties, or any of them should not unite, the combination must only look for an equivalent, in an alliance with the Rappahannock or Appomattox. The whole force of the ten South-Western counties upon the compound basis is but eight votes—which subtracted, would leave the strength of the James River, and Potomac interest fifty-four votes—and leave them to seek seven allies from the other districts.

These views of the subject serve to show you, that upon either basis, the State is perfectly safe from the domination of any one great local interest—that upon neither is it safe from combinations of them, if such combinations be practicable at all—that in this respect, if there be any difference between the two, it can only be, that on the compound basis the combination required may be a little more extensive, and, therefore, a little more mischievous in its consequences. But, Sir, when we ascertain that the great body of the State above and below the mountain is directly interested in its internal improvement, of what great consequence is it to calculate the probability of combinations? The policy must and will be cherished, and whenever plans are presented, which recommend themselves to public approbation, by their apparent practicability and usefulness, they will be adopted. Gentlemen have supposed, that, as the more expensive improvements were best suited to the Western interests—as the estates of the Western people were to be most improved by them, and as they contributed the smallest proportion of the taxes, which might be necessary to defray the expense—they would be less careful in counting the evils and more disposed to encourage extravagant and ruinous projects.

Without stopping to enquire whether the Western people have most interest, in the more expensive improvements, I am content to have shown you that the Valley people at least contribute man for man, nearly as much tax as the Eastern people—that the whole West, when the inequalities of the last assessment shall have been corrected, will contribute fully in proportion to their ability to pay—that a man of small property, parts with a tythe of his profits, with as much caution and reluctance as the man of large property, and that the local tax, in the form of tolls or otherwise, which the local district must pay for every improvement will at once secure a rigid attention to its economy and usefulness, and guard the public interest. My purpose in advertising to the argument, now, is to show the consequence to which it leads. Observe, the argument is, that the Western people will advocate improvident expenditures of public money, in the improvement of their estates, because they contribute unequally to the public treasury—to control which, power should be given to the Eastern people, by giving them representation in proportion to their taxes and numbers combined. Now, it is obvious, that if the money is to be expended, in the improvement of Western estates, the inequality of contributions cannot be the only or the governing motive with Western men, looking to their interest, for advocating the expenditure. Suppose the contributions equal, suppose the Western man to pay dollar for dollar with the Eastern man, and their joint contributions to be applied to the improvement

of western estates—would not the expenditure still be an object of desire to Western cupidity? How much difference would it make in the conduct of an interested man whether, for the improvement of his own property, he was voting half a dollar of his own money with a dollar of yours, or one dollar of each? You would have as little confidence in him, in the one case as in the other. If it be true then that the Western people are interested in improvements that do not interest the East—and that they would be tempted by selfish considerations to expend the public money in those improvements, without adequate indemnity, then it is manifest, that no safe-guard would be found for the interests of the East, in the circumstance that the West paid an equal proportion of the public taxes. In such a state of things some other argument must be found, and doubtless would be found, to justify the refusal of power to the West. We should be told then as we are told now, that to secure the property of the East from the power of the West, the Government must remain in the hands of the Eastern people; and some new basis of representation would be devised to effect it. Would not this lead to the conclusion, that the tide-water country, as least of all interested in internal improvements, as the most impartial arbiter between the various local interests, is the only proper depository of the power of this Government?

Before I take leave of the subject of internal improvements, allow me a brief explanation relative to one, which seems to have been much misunderstood here. I allude to the James River improvement—which has been treated in a manner calculated to cast imputation on its friends, and throw discredit on the system.

In the year 1784 a private company was incorporated, for the improvement of the navigation of this river, and fixed tolls on transportation allowed them. They made the contemplated improvement, and had been for many years in the enjoyment of very large profits upon their stock. Much complaint, however, was made against them, for imputed neglect of duty and violation of their charter. These complaints were most earnestly and perseveringly urged from the South side of the river, and the Legislature was repeatedly pressed to charter another company with privileges incompatible with those of the James River company—and to declare its charter forfeited and void. These measures resulted in a resolution of the General Assembly, directing a prosecution in the General Court, to ascertain whether the charter was forfeited. Pending this prosecution, the Legislature, by a compact with the company, assumed the whole interest, and entire control of the subject, and passed a law for effecting an improvement deemed of great importance to the Commonwealth, by a continued Canal from Richmond to the mouth of Dunlap's Creek; a turnpike road from thence to the Great Falls of Kanawha, and removing the obstructions to the navigation of that river, from thence to the Ohio.

This law provided for the assessment of tolls upon the transportation for the purpose of indemnifying the Government for the expenses of the improvement; and in order to give assurance to the local interest that it would not be prematurely or unjustly burthened, a pledge was given in the law itself, that the additional tolls imposed should not exceed one-third of the saving in the price of transportation, effected by the improvement. Great pains had been taken by repeated surveys and reports of commissioners and engineers, to ascertain the probable expense and value of the improvement; and some confidence was entertained in the opinion that it was practicable, at an expense not burthensome to the State; that its consequences would be very beneficial; and the reduction of freight so great as to justify a toll which would re-pay the interest of the money expended, and not exceed one-third of the saving in the price of transportation. Nevertheless, the Legislature, with wise precaution, so laid out the whole into convenient sections, as to give themselves the benefit of actual experience in the progress of the work, and to enable them, if they thought fit, to arrest it at such points, as falling far short of the whole plan, would have achieved objects valuable in themselves, and promising a reasonable profit upon the expenditure. The first section was the canal from Richmond to a convenient point on the river, beyond the limit of the rich mines of coal which lie in the vicinity; the second, the turnpike road; and the third, the improvement of the navigation of the Kanawha. The tolls upon coal were expected to indemnify the expenses of the first; the tolls upon the road, the second; the tolls on the valuable salt trade then growing up on the Kanawha, were relied on to indemnify the expenses of the third; and it was believed, that if experience should forbid the further prosecution of the improvement, these three sections would be permanently useful. They were therefore immediately provided for, and in the course of a few years completed. The mountain section—the canal through the Blue Ridge, was the result of subsequent legislation. When the three first sections had been finished, the expenses of the canal had so far exceeded the estimates, that the most zealous friends of the improvement, doubted the propriety of prosecuting the whole plan to its completion. It was in this state of things that the additional toll on tobacco was recommended to the Legislature by the Board of Public Works, and was advocated on two grounds;—first, that the interest

of the tobacco-planters would well justify this offering, which, by increasing the revenue of the company, would restore confidence, and might ultimately secure success to the improvement in which they were deeply interested; and secondly, that justice required it, inasmuch as the toll on tobacco had been originally too low, in comparison with the toll on flour and other products. A bill passed the House of Delegates, imposing this additional tax; and in the Senate, of which I was then a member, representing a farming and not a planting district, I united with the most decided friends of the James River improvement, in the tobacco districts and elsewhere, in a zealous opposition to the law, insisting that it would be a breach of faith; that it was wrong in itself, and would alienate from the improvement the affections of some of its most constant friends. The bill, however, was carried, by the vote of the East, combined with the enemies of the improvement every where, and with a few Western members, who were, or had been friendly to it. It is not just, therefore, to charge this law to the bad faith of the West. I charge it not to bad faith or improper motives any where. Gentlemen, no doubt, acted as they thought was right:—but the law is unquestionably to be charged to the vote of those in general, who were unfriendly to the James River improvement. I have but one word more to say in relation to this improvement—and that is, that notwithstanding the bad economy with which the work has been done, it having cost at least one hundred per cent. more than we now think it ought to have cost, yet the income from the tolls furnishes a reasonable profit upon the whole amount expended:—and that the freight upon transportation, from the district at the head of the first section, which can avail itself of the full benefit of that improvement, has been reduced one half.

I thought this explanation called for, by the remarks of the gentleman from Fauquier, (Mr. Scott) and others, and hope that it may remove some prejudices and quiet some fears.

I learn, Mr. Chairman, that other fears are indulged by the gentlemen of the East, from the transfer of power to the West: They fear not only that the estates of the West are to be improved, but that the poor of the West are to be educated, at the expense of the East. It is most deeply to be regretted, that there is any thing in the local situation of a particular property in Virginia, which gives rise to so many and such apprehensions. Interests the most general and most important; those most intimately connected with the prosperity and happiness of the whole people; the general protection of property, the improvement of all our roads and rivers, the education of our people, and the organization of our Government; all, by the malign influence of this unhappy cause, are made the subject of local jealousies, and party contests. What is the foundation, Sir, of this new alarm? For nearly fifty years, we have had, from time to time, various plans of public education, submitted to us, and discussed in the Legislature and before the people. Some of them, no doubt, have been wild and visionary; but, I believe, not one of them has ever been so extravagant, as to propose a general tax for the education of the poor. The farthest that any one of them has gone, has been to propose, that the school districts should be taxed, in aid of the contributions from the Literary Fund, for the education of the poor of those districts respectively. But, what warrant is there for supposing, that the education of the poor from the public purse, is a Western interest; that their poor are more numerous or less educated than yours? There is none; and it ought to be remembered, that the most extensive schemes of public education, if not all, that ever have been submitted for the adoption of this State, have proceeded from Eastern politicians.

But, suppose that the danger which has been apprehended to the security of property, the danger of an unjust levy and application of the public taxes, will really attend the unqualified transfer of power; is the appropriate remedy to be found in retaining that power in the hands of the minority? I think not.

Appeal, if you please, to that cautionary doctrine of the gentleman from Fauquier, which teaches that the greatest merit of a Constitution, is in giving to Government those powers only which are essential to the general welfare, and apply the remedies which it suggests.

If you think that your slaves will be unjustly taxed, prescribe in the Constitution a proper limit upon the legislative power: fix the ratio between the tax on slaves and real estate, according to some just standard; declare that the tax shall be *ad valorem*, and equal on both, and that the one shall never be taxed without the other. In this, I will cheerfully co-operate with you, satisfied that such a provision would be just and effectual. Any law imposing a tax in violation of it, being forbidden, by the Constitution, would be void; every one interested, might resist the payment of the tax, and he would be sustained by an independent judiciary.

If you think there is real danger, that the public revenue will be unjustly applied to partial objects of internal improvement; if you really think that the spirit of internal improvement requires rather to be checked than encouraged, limit the powers of Government upon this subject also; provide, that no law appropriating the public revenue to such objects, or borrowing money for them, upon the public credit, shall

be enacted without the concurrence of specified majorities in both Houses; majorities of four-sevenths, three-fifths, or whatever else might be equivalent to the whole restraining power, which your favourite basis would give you. However reluctant I should be to add to the very strong shackles, which nature has imposed upon the power of legislation on this subject, I could not hesitate to adopt such limitations upon the power of the majority, rather than yield it to the minority.

If you think that guards are necessary to restrain the improvident application of public money, to the purpose of educating the poor, prescribe them at your pleasure; for myself, I give you a *carte blanche* on this subject.

If none of these expedients will impose an effectual restraint; if the power of the majority is so great, that you fear its irresistible strength will burst all the bonds imposed upon it, do not claim this uncontrollable power for the minority: there is an expedient, by which it may be denied to both. Apply your basis to the Senate, and let ours be applied to the House of Delegates. You have told us you do not ask power; you only ask for protection; and you say that power only can resist power. There is certainly no method by which you can use the power of the minority as a check to the power of the majority, but by giving to each the power in one branch of the Legislature. Do not understand me, as advocating such a distribution of power, upon principle, or as conceding that it is required by the peculiar condition of Virginia. All I say is, that it is the utmost extent to which your own principles would carry you. You object that such a Senate would be no sufficient safe-guard, because being the smaller body, and representing in some degree the property of the country, it would be stigmatized as the aristocratic branch of the Government, and would not be able to resist the measures of the popular branch of the Legislature. We are told, that though it may resist for a short time, it must yield to the popular voice in the course of a few years, as all experience proves.

These objections, I think, are wholly unfounded. My experience in the Senate of Virginia, induces me to think that it is admirably suited to guard the legislation of the country against injustice, and the influence of popular clamour. It has nevertheless been reproached as the aristocratic branch of the Legislature, wherever it opposed itself firmly to the popular branch, as it often did, to the almost unanimous vote of the House of Delegates. The four years term of service, the classification, which carries out one fourth of its members each year, and leaves the other three fourths to render their account to their constituents, only when they have had one, two or three years' experience of their measures and reflection upon their conduct, gives a confidence to their opposition of injustice, and of the mischievous measures which popular excitement dictates, that is very rarely subdued. It is true, Sir, that a Senate constituted as ours is, cannot for a series of years, resist the settled wishes of the people: Nor should they. Like all other representative bodies, they ought to yield, and must yield, to the deliberate will of their constituents. And so ought, and so must your Senate formed upon the compound basis, yield to the settled will of their constituents. Nor can you desire that it should be otherwise. Their constituents will be that very minority, that very people to whom you desire to give the power: But, they will not yield to the will of the House of Delegates, nor to the will of the constituents of the House of Delegates. The two constituent bodies will be different, and as the members of each House will look to their own constituents for a renewal of the trust confided to them, and for approbation of their conduct, so they will look to the same source for instructions, and for that settled popular will, which must habitually guide the representative. I cannot doubt that such a Senate would afford ample protection against all the dangers to property, which have been apprehended from the power of the majority.

I have endeavored to show that no such protection is necessary, that no such danger exists. I have said in another place, and I will repeat here, that your peculiar property does not require representation in order to give it influence and power in the Government. You having more wealth—your lands being cultivated by slaves—all the menial duties in your families being performed by slaves—your white people have more leisure to devote to the cultivation of their minds, better opportunity to prepare themselves for those stations in society, which give distinction and power to talent, than can possibly be enjoyed by your Western brethren. In answer to this, it is said to be a ridiculous mockery to speak of the wealth of the lower country, and I have been asked whether I know a single man in the Commonwealth, who has been more than half educated since the revolution. I know not by what standard gentlemen would estimate wealth or education; and I have said nothing of great riches or finished educations. But the whole argument of the Eastern gentlemen, and the scheme of representation they propose, are founded upon the superior wealth of the East, and I can appeal to numberless witnesses, among the living and the dead, who will bear ample testimony to the fact, that in the East have been born and educated, almost all our distinguished orators, jurists and Statesmen. Where do you find the eminent men, who in former or latter times, have ornamented your bar and

your bench, have enlightened and guided your Legislative Councils, State and Federal? Whence your long list of Governors, and your race of Presidents? It is the natural, the necessary effect of your slave population to give these advantages; and they must give political power. But I am asked, whether if superior wealth gives superior intelligence, that intelligence does not give superior virtue—and whether I would withdraw the power of the Government from its intelligence and virtue.

This is ingenious catechism, Mr. Chairman, but not sound reasoning. It does not follow, that when superior numbers are on one side, and superior talent on the other, the power of the Government will be with the superior numbers—This conclusion would deny the influence that talent exerts over numbers. And much less does it follow, that superior intelligence gives superior virtue in that condition of life to which this argument applies. I might very safely concede, and I do concede, that in the retired walks of private life, intelligence cherishes, if it does not create virtue; rebukes and restrains, if it does not repel or subdue vice. But I cannot admit, that the school of politics, is the school of virtue. I should not look for the most virtuous men among that class, however enlightened, who have been long disciplined in the arts of electioneering and intrigue; who have been accustomed to the simulation, and dissimulation practised in the management of men; who have been drilled in the tactics of party warfare, and have become veterans in the conduct of political campaigns. I should, with more confidence, look for them among the independent and intelligent in the middle class of society; who obey a call into the public service as a matter of duty; whose ambition is satisfied, if that duty is faithfully performed; who find their chief happiness in this life, in the bosom of their own families, and limit their principal desires to the boundary of their own farms. I cannot allow, then, to your superior intelligence any necessary superiority of virtue; and though we are willing that you should enlighten the path of our duty and persuade us to follow it, we cannot consent that you should prescribe it.

While I would most cheerfully submit to the natural influence of your talents; while I would most cordially co-operate with you, in any reasonable measure to guard your property against all injustice from the power of the majority, I never can consent to surrender the power into the hands of the minority—to give them the complete dominion over the persons and property of the majority. You ask, what security we can give you for the protection of your property? We ask, what security you can give us for the protection of our persons and property? You tell us you have not abused your power, you have been guilty of no injustice, no oppression for fifty years. We tell you, that you admit us to be the same people with yourselves, entitled to equal confidence, and that if your good conduct, for fifty years, is evidence that the minority will rule justly, it is equal evidence that the majority of the same people will rule justly. But you place your principal reliance on the position, that the legislation which you would adopt for the promotion of your own interests and protection of your own rights, would necessarily promote our interests and protect our rights. Let us examine this.

Upon the subject of internal improvements, have you not told us, that the interests of the West required one system, and the interests of the middle country another; and is it not a very general opinion, in the Eastern district, that their interests require none? Consult, then, the supposed interest of the East and abandon all improvements, or consult the views of the middle country, and adopt the system best suited to them, adopt a narrow, selfish policy, and stop all your improvements at the base of the Blue Ridge, take our money to make them, and what becomes of the necessary connexion between your interest and ours, of the protection you were compelled to give us, in protecting yourselves?

Again; you have already told us that your slaves were too highly taxed—a position which we controvert. Suppose you reduce the tax one-half, and throw the burthen on lands?—or suppose that you persuade yourselves, that retributive justice requires that as your slaves have been taxed too high for the last fifty years, they should not be taxed at all for the next, and act accordingly; would this measure adopted to promote your interests, necessarily promote ours also?

Is it, as you have supposed, that there are no subjects of taxation in the West, that do not equally abound in the East—none on which a tax could be levied, that would not bear as heavily on the East as on the West? The gentleman from Chesterfield supposed that the tax on horned cattle would bear as heavily on the planting districts of the East, as it would on the grazing districts of the West, and quotes the experiment of a single year, during the late war, to sustain his conclusion. He tells us that this experiment produced as much revenue from the East, as from the West. He supposes that he himself, a few years before, had made the first proposition that ever was submitted to the Legislature, for imposing a tax on cattle—and that this single experiment, resulting so differently from what was anticipated, is good assurance that the tax can never be resorted to, as the means of imposing undue burthens on the

West. Without examining the result of the tax laid during the late war, or enquiring into its cause, I should be very sceptical in the opinion that a cattle tax could operate equally, in the East and the West—equally upon a corn, a cotton, or tobacco plantation, and upon a grain-growing or grazing farm; and I, with all other Western men, would be very unwilling to see the question brought to the test of *experience*. Time may come, when it will be. My friend from Chesterfield is mistaken in supposing that he first proposed this tax. It was habitually levied during the revolutionary war, and for some years afterwards; and no doubt, there had been paid the assessed three pence upon the head of that very bullock which was impressed by an officer of the revolution from John Hook, and whose “moaning low” figured so conspicuously in the eloquence of Patrick Henry.

But, Sir, it would not be difficult to find many subjects of taxation in the West, in which the Eastern people have comparatively no interest. Even their extensive coal mines may, at a future day, be the subject of a burthensome tax, in which they would find no sympathy East of the mountains, except in the counties of Chesterfield and Henrico. But look at the boundless stores of metallic ore which the Western mountains every where contain, and their extensive salt works, to the growth of which there is scarcely an assignable limit; and you cannot doubt that a disposition to impose unjust burthens on the West, could readily find the means. Does any one doubt how unequally an excise on distilled spirits would operate? I must not be understood as imputing to the people of the East any disposition to impose unjust taxes, or injurious legislation of any kind on those of the West. I do not believe they have any such disposition—but it is my duty to show that if they had, it might be indulged; and that, therefore, we have the same reason for withholding extraordinary confidence from them, which they think they have for withholding from us the ordinary confidence which is extended to the majority of equals.

To the proposed compound basis, Mr. Chairman, I have insuperable objections. As its direct object and effect will be to give the power to the minority, so its natural, if not necessary consequence will be to propitiate that power, even although the reasons for bestowing it should pass away. In process of time, the works of internal improvement may cease to be a subject of jealousy, and the slave population may become so generally diffused, as to quiet all fears on that score—and yet the power of the Government being in the hands of the minority, they might so regulate the taxes, as to retain that power at pleasure. They would be the sole judges, whether they would pay the purchase money. Was it to this event, Mr. Chairman, that the gentleman from Northampton sagaciously looked forward, when he asked the emphatic and significant question, whether we were willing to pay the whole expenses of Government, and take its whole power? No, Sir, I do not believe that *that* gentleman had in contemplation any such abuse of the power, which he desired to bestow on the minority—I believe that his was a mere rhetorical question—and yet it could not fail to remind us of the value which ambition sets upon power, and led us to enquire what price the minority might be willing to pay for that which the majority would not, or could not purchase. Looking back but a few years into the history of our own Government, we are taught, by the extreme reluctance with which that minority parted with their power in the Senate, for which they paid the price of a double or a triple land tax—how highly it was valued by them. Considering the very small amount of the taxes of the State, it can scarcely be deemed unreasonable to suppose, that the people East of the mountain would always be willing to pay a double portion of them, as the price of the power of the Government. Whether they would or no, *they* ought not to be exposed to the temptation—we ought not to be exposed to the danger.

Another, and perhaps more serious objection to the compound ratio, is the tendency of the principle on which it is founded. Although, in the actual condition of Virginia, it would establish no aristocracy or oligarchy, would leave us still a popular Government, yet it is wise to examine its bearing, and consider how far it is proper to admit it into our republic. The principle is, that as property must be protected, it must have a representation, which would give its owners the power of the Government as the only effectual means of protection. Now it is manifest, that the argument in favor of such protection strengthens, as you increase the value of the property and diminish the district in which it is situated—So that if the whole slave population of Virginia were confined to the tide-water district, that district might *a fortiori* claim the power of the Government as essential to its protection. But, would such a claim be tolerated for a moment? Could it be allowed, and leave any longer a popular Government? No, sir! But, yet there is in the nature of our Government an appropriate protection for property thus situated, thus exposed to danger—and a wise majority would not fail to furnish it. They would not surrender the power to this small minority or to any other; but they would erect constitutional barriers to the exercise of their own power—and if they believed every other inefficient, they would give to the minority a veto upon those laws which might invade their rights. It is in this veto, that

the checks and balances of well adjusted Governments must be found, where the object is to protect warring interests from the power of each other. The various instances of the restraint upon the power of the majority, referred to by the gentleman from Orange, (Mr. Barbour,) are all either restraints upon the power of the majority, for the protection of the rights of the minority, or expedients to secure deliberation, and protect the majority itself from the effects of inconsiderate action. None of them are intended to give power to the majority. Let us not then admit into our Constitution the principle that the property of the country, as essential to its protection, must possess the power of the Government.

In conclusion, Mr. Chairman, I beg the Committee carefully and impartially to compare the two propositions which are submitted to their choice—to reflect on the simplicity, the uniform character and operation of the one, its entire conformity with the great principles of our Government, and on the complex and varying character of the other, its proneness to abuse, and its strong tendency to discredit, if not to condemn the doctrines which we have been taught most to respect and reverence—to enquire, whether the one, with a proper limitation of the Right of Suffrage, does not afford the best possible assurance of protection to all interests, and security to all rights, while the other endangers the very objects it seeks to secure—and, above all, to remember, that the one leads to the restoration of confidence and good feeling, the establishment of lasting peace and harmony, the preservation of the power, the character, the integrity of the State—while the other sows the seeds of never-dying jealousy and contention, and threatens mischief which no human wisdom can calculate, and no patriot can look upon without horror.

I beg the Committee's forgiveness, for having detained them so long, in a very laborious and unprofitable effort to discharge my duty, and I have now only to ask, that if any thing has escaped me, importing any manner of disrespect, or in the smallest degree wounding the feelings of any one—gentlemen will recollect that I have not that happiness of phrase, which always faithfully translates my thoughts into language, and be assured that I have too much real respect and kind feeling towards every member of this Committee, to allow me for a moment, to entertain towards one of them an offensive sentiment.

Mr. STANARD now rose and addressed the Committee in nearly the following words :

My sincerity, I am sure, will not be doubted when I avow the reluctance I feel in addressing the Committee at this stage of the debate. Conscious that I have but little title to claim attention, at any time, I cannot hope that at this any will be acknowledged, or that I shall be able to requite the attention which courtesy may accord, by any thing that I can extract from a theme already so elaborately discussed. A jaded audience, and an exhausted subject, are certainly very strong discouragements ; and the force of these discouragements is augmented by the circumstance, that I follow the able gentleman who has just closed his argument.

Powerful considerations alone could overrule these dissuaves, and by such I am impelled. They arise out of the situation, (not entirely peculiar, but not common to many,) which I hold in this Assembly. Though for many years separated by residence from those whose interests I here represent, they, disregarding this almost insuperable objection, have selected me as one of the depositories of the important trust with which this Assembly is charged. By so touching a proof of kindness and confidence, they have entitled themselves to my most grateful and devoted service. The question in debate involves some of their dearest interests, and the vote that I shall give on it, will, as I believe, sustain those interests, while it will accord with the opinions of a great majority of my constituents. These interests have been assailed, and these opinions have been stigmatised, and I feel that the generous confidence which has placed me here, requires of me the requital of an attempt to uphold those interests and vindicate those opinions, though I should sink under the effort.

The amendment proposed by the gentleman from Culpeper, and which it is my purpose to sustain, has been characterised as anti-republican, aristocratical, oligarchical ; and these epithets, I have cause to apprehend, may be fastened by popular delusion, to the opinions of which I am the organ, to their disparagement, and to the injury of the interests connected with them. It is due to my constituents, that I should endeavor to redeem their opinions from these stigmas.

I yield my ready concurrence to the sentiment of gratulation, which has been repeatedly expressed on the temper of this debate. It has my entire approbation. Here passion should have no voice, because here it ought not, and, as I trust, it cannot find a proselyte. While I shall conform myself to the spirit which has thus far governed the discussion, I have no hope to imitate those who have preceded me in the impressiveness and strength of their argument. Their eloquence I shall not attempt to emulate. Did I feel myself competent to do so, I should find in the recent experience of this Committee a lesson of dissuasion, too impressive to be unheeded. For who, Sir, has forgotten how instantaneously the spell attempted to be thrown over this body by the impassioned peroration of the gentleman from Loudoun was dissolved,

and the memory of it obliterated by the sober realities, the ponderous facts, the luminous statements, and the cogent arguments by which they were connected, of the gentleman from Accomac (Mr. Joynes.) The instruction I draw from this lesson is, that this is not a proper theatre for such displays. And here permit me to say, that I would not stint to the West the eulogy they merit. I would not deny the need of praise for the services and sacrifices so eloquently commemorated by the gentleman from Loudoun. It would not suit my feelings or sense of justice to do so. But, this claim is no novelty. It has been urged on this floor, by lips as eloquent as those of the gentleman from Loudoun. It has been repeated, and reiterated again and again, within these walls. The claim has been acknowledged, whenever it has been asserted. It was heard here in 1816, when an extensive scheme of banking was brought before the Assembly, and though in that instance it failed to produce the intended effect on that measure; yet if evil averted, may be permitted to stand, as good conferred, the West was certainly more than indemnified, for all its sacrifices, by having averted from its borders a moral pestilence, which would have contaminated its morality, and overwhelmed its property. It was heard again on this floor, when the expenses of the very epoch at which the services were rendered, were returned to us by the United States, and Virginia was indemnified for her advances, and when a destination was to be given to the large amount then received by the State. That sum, which, in the proportion of three or four to one, had been advanced by the East, was, with a commendable generosity, partitioned, not in the proportion of three to one, nor of two to one, but of one to one, or at least three to two, with the people of the West. How often it has been heard since, all those cannot fail to recollect, who have had any share in our public councils. I say not this by way of disparagement, nor from any want of gratitude: but may I not be permitted to ask, is this service of the West always to stand without any counterpoise? Is it to endure for all time and for all purposes, as an undiminished charge against the East on which to demand forever new sacrifices and new concessions? Must it be considered like our obligations to our Creator, "a debt immense of endless gratitude, still paying—still to owe?"

Is the service such that nothing can requite it, but the surrender of the power over the whole property of the East? Nor do I mean to question the virtue or intelligence of the people on which you, Mr. Chairman, so earnestly insisted, when you recently addressed the Committee. I yield on this subject all that was claimed by you. But may I not ask, are the means resorted to, to preserve it, judicious? Is it wise, when we would guard our virtue, to separate interest from duty; to expose that virtue to the strongest temptation? Ought we to do this at a time, when we propose to break up the existing order of society, and to change its organic law; at a time, when the minds of men are cut loose from their moorings, and all things and all principles are set afloat?

Nor do I mean, gentlemen of the West, one and all, (I speak with the utmost sincerity, and that my language is not the profession of the day or for the occasion, I appeal to my public course when I was a public man,) I mean not to question your honor, nor to say, nor to insinuate, that you have a desire to revel in the spoil of the East: I do not ground my course of action on the belief, that any spirit of rapine will govern you or your sons. No, gentlemen, I have full faith in your sincerity. I have confidence in your honor personally and politically—I question not the sincerity of the gentleman from Loudoun, (in truth I do not.) Even when shedding tears of anguish over the desolate fields and mouldering mansions of the tide-water country, and bewailing them with a pathos that almost extorted tears from others, and looking with rapt vision to the consummation of his hopes of future improvement, he surrendered himself to the illusion, that verdure and fertility could be restored to these wastes, by taking from their owners a portion of their scanty products to improve the highlands and torrents of the West. No, Sir. I have not attained the years which I now number, without instruction from experience, which assures me how possible it is for the strongest mind, and the purest heart, to be exposed to delusions of this kind.

It is important, that before advancing in the discussion, we should have a correct conception of what is the real question before us; that we should clearly understand what is the matter in issue. It is not the issue which the gentleman from Augusta made up, (Mr. Johnson.) That gentleman essentially changed the issue presented by the resolution of the Committee, and the amendment proposed to it. And here let me say in passing, that if he was right in all he said, then we are disputing about a mere form of words, and nothing more. Both the resolution and the amendment are only means to an end; that end once attained, it is a matter of little consequence whether the means be preserved or not: they are from that moment of little value. What do we learn from the statistics of the gentleman from Augusta, as applied to his interpretation of what he makes the riddle of the Committee? The first thing that we learn, is, that the ratios furnished by the entire number of the white popula-

tion, are different from the ratio arising from that portion of the community which are Catholic, which belong to the body politic, and exercise the Right of Suffrage. He, in apportioning representation, is for excluding all but those who have the Catholic qualification; and applying this rule to the data furnished by the Auditor's statements, it is shown that the masses of power in the four grand divisions of the State, scarce differ by units from those which will be quoted to them by the adoption of the amendment, and the application of the rule it would furnish.

After this digression, (to which I have been led by the strong impression his statement made on my mind,) let me turn back to the line of argument I intended to pursue.

The first thing it becomes us to look at, is the erroneous representation of the question before the Committee, and the gratuitous assumption of the principles which are to resolve it. The question has been treated, as if it were one now before the sovereign power of the State, in its primary assemblies, and the people were called to give their final vote upon it. It has been treated, as if the integers of this assembly were to be reckoned for more or less, according to the mass of population in their several districts, as if, telling over the members of the Convention, name by name, and putting a value on each, the question was to be decided, not by the numbers present in this body, but by the numbers of the population they represent:—and the majority of these latter numbers having been ascertained, those representing this majority, should prescribe the terms of the Constitution, and the minority have no further voice. Sir, is this correct? Or, is not such an assumption at war with the very ends of our appointment, the very nature of our trust, and derogatory to that intelligence we are so lavish in ascribing to this Assembly? If this be the true question, instead of prudence, knowledge and virtue, the sum total of the qualities required in us, is the capacity to add, subtract, and strike a balance, and the entire argument consists in the force of that balance, when struck. If this be the true question, and these the means of solving it, then is this Convention a mere bed of justice, and its entire function is to record the pretended edict of the people. The terms of that edict are to be dictated by a self-selected portion of this body, and its obligation is to be found by summing up the quantity of the people, young and old, children and men, male and female, and thus fixing the value of the votes of those (the self-selected part of this assembly) who represent them. What is the use of deliberation? Why did we resolve ourselves into special Committees; into miniature Conventions? Why do we sit here discussing questions from day to day, and from week to week? Why did the people look round to collect the patriarchs of the land, that they might bring their prudence, and wisdom, and experience here? Why all this, if all we have to do is only to add and to subtract? No, Sir; this representation of the question, which, I believe, has had more effect both here and elsewhere, than all other arguments, is utterly fallacious. Considerations of majority or minority do not belong to the initiatory inquiry. If they did, they would annul the functions of counsel and deliberation. And what is the character of this Assembly? We were sent here to counsel and deliberate; to take a broad survey of this widely-spread nation; to take the measure of its interests and its capacities; to weigh facts, to draw cautious and sagacious inductions; and then to submit to the people, not what they have prescribed, but that which we think a majority of the people ought to ratify. We are not to be forestalled by calculations: we are to present the result of a wide view of the true interests of the State, taken by the congregated wisdom of this body. We are to carry into effect the principle of our selection. We are to have the influence of the patriarchs of the land, to recommend the result of our investigations. We are to have the inestimable value of the weight of their authority. They are to stand before the people as instructors, not as the passive instruments of a foregone decree.

The true question is, what in the opinion of this Committee, with all its experience, and all its political prudence, after all its inductions from an extended observation of the interests, circumstances, habits, and physical aptitudes of the State, a majority of the people ought to accept as their organic law.

Here we are on a foundation where we can exercise our minds; not fettered by the results of calculations, which, by pre-supposition, has the authority of a mandate, takes away from us all free will and counsel, and leaves us mere instruments to ascertain numbers, and to record a pretended decree.

I have remarked, that the argument, which if it be not most frequently used, is yet really the most prevalent and irresistible, is the argument of epithets.

I shall address myself to that first.

Let us then enquire, whether the amendment and the principles on which it proceeds, merit the disparaging epithets which have been applied to them. I shall be vindicated by the judgment of the Committee, in addressing myself first to this part of the argument, because I am satisfied that there is not one who has looked upon recent and passing scenes, and has anticipated others, still not developed, who will not concede that the argument of epithet is a most potent one, if not the most potent

one, on all political themes. I beg pardon. I have been too hasty. I agree with my friend from Chesterfield, that there is one yet more potent, and it is this: We are, or shall be, the majority. Yet even this is of little value, unaccompanied and unaided by the other. It shall be my humble effort to disarm my opponents of this argument, by showing that it has been gratuitously assumed, and most wantonly applied. I shall endeavor to do this, from the reason of the case, from the concessions of our adversaries themselves, (adversaries I hope only, as they are our opponents in argument,) and from the examples furnished by the political institutions of our sister States, and of the United States.

As the means of fixing a stigma on an opinion held by so many, gentlemen have assumed that that opinion commences with the postulate, that there are no principles in Government. I am under no need of vindicating the gentleman from Northampton from this imputation. He is able much more effectually to vindicate himself. Whether such a sentiment is justly ascribed to him, whether in fact it was ever uttered by him, and if it was, whether it must not, in common charity, be received as only a strong expression of the opinion, that a single principle is not a safe guide in adapting political institutions to a mature people, (the opinion which I shall maintain,) I leave for gentlemen to determine.

[Here Mr. Upshur rose and declared, that he never uttered the opinion.]

Mr. Stanard resumed.

I did not hear the gentleman utter the sentiment, and his disavowal of it conforms to my recollection of his argument. Such a position is no part of my political creed. My creed instructs me in opposition to this dogma, that the principles of Government are numerous and multiform; as much so as are the interests, habits, moral condition and physical situation of the people to be governed. No principles in Government! Every one of these considerations is the fruitful parent of numerous principles, and it is the business of the Statesman, by wide and extended observations, and searching investigations, to extract the principles which ought to regulate their organic or municipal law. Principles multiply with the diversities in situation, habits and interests, of the people to be governed. They are few and simple among a new people, whose population is homogeneous, whose interests are united, and among whom, no great disparities or contrarieties are to be found: they become numerous, and they multiply in geometrical ratio, as such a people advance to maturity, as they diversify their interests, and by long continuance under one system of organic law, they become gradually moulded by it in all their habits and interests. These principles often take their origin from different parts of the social circle—they traverse and intersect each other—one principle often encounters an antagonist principle—and then it is the province of wisdom to discern, and of prudence to allow the due proportion of force to each. Under the government of reason, all of them are entitled to their own prerogatives—though not equal, (like a fancied republic of men where all are equal,) all have a voice—and the ear which will not hear all, is deaf from the influence of prejudice, and averse from the policy which alone can conduct to peace and happiness. No one principle is to have a despotic sway, and to hush to silence all the rest. All are to be heard—and here is our point of difference.

Gentlemen have imputed to the supporters of the amendment of my friend from Culpeper, the avowal or the maintenance of the sentiment, that there are no principles in Government—and they, on the opposite hand, have given to one solitary principle, despotic sway, silencing all the rest. Gentlemen have applied themselves to what they were pleased to call an analysis of the principles of Government—and the result has been the evolution from the concrete mass of one single principle—and that they administer in its essence, utterly disregarding all those which modify and give to it all its sanative efficacy. They treat the subject of Government as a chymist would the food which sustains us, and in which, in its native, healthful state, is found in combination with many others—one ingredient which gives it all its flavour and much of its nourishing quality—but which, when extracted from the mass, and administered in a state separated from that which assuages and dulcifies it, maddens the brain, while it ministers no nutriment to the body.

Let me tell the Reverend gentleman from Brooke, (for, among the fallacies of the day, is his attempted application of analogies drawn from the exact sciences to that of Government,) to whom we are indebted for the reference of the forty-seventh proposition of Euclid's first book, that geometry, whether superficial or solid, furnishes but a poor guide, when we would measure the force, ascertain the value, and fix the relations of moral and political quantities.

Under the guidance of a fallacious analogy, the gentleman thinks it would be wise to set out with certain *a priori* principles, certain postulata and axiomata, and then to keep ourselves within the exact parallel lines which these guides shall prescribe to us. Let me tell that gentleman, that for the construction of political and moral theorems, there are no postulata, which give him a straight line, that may be indefinitely extended; no definition of a point, without length or breadth; no axiom which

allows that a given number of integers combined, is of the same value as the like number, indicated by summing up separate and detached integers. All these guides will fail him, and he will find himself betrayed into the most desperate and fatal errors, by submitting himself to their absolute sway. Proceeding on his straight line, he will go on, linking consequence to consequence, and induction to induction, to an almost interminable extent; like Jacob's ladder, which led from earth to Heaven—only, that this, I fear, takes the opposite direction.

I said, that in constructing moral and political theorems, especially when providing an organic law for society, already mature, whose interests have been growing up for two centuries, numerous principles are necessarily required, in order to give form to a Government, which will secure to each the enjoyment of life, liberty, property, and the pursuit of happiness, and to produce the greatest sum of public good.

Let me now attempt to furnish some illustrations, and to correct some paralogisms, by which gentlemen attempt to fix on us, that which we condemn in them, viz: the following out of one principle to extremes, disregarding all others.

Look to England—grown as she is to a magnitude of opulence and aggrandizement, with interests distinct in their nature, enormous in their amount, and diverse as to the parties possessing them. Is there a fanatic in the land, who would take up *a priori* principles, if he were called to make a Constitution for that people, and be governed by them alone? Is there one who has so entirely surrendered his mind to certain simple abstractions, as that he would undertake, at one blow, to level all these interests, and give a free and equal representative Government to that people? Yet the general principle of Republican Government is no less true, and without it, no free Government does or can exist. It is found in the British Constitution—modified, indeed, and maimed—and far below what it is in this country—but, still enough to make that a free Government, so far as mere civil rights are concerned.

But, supposing him to get rid of the most obvious impediments to the practical application of this famous political theorem, (viz: the equal rights of man, and the equal enjoyment of political power;) suppose, I say, that he gets rid of the Nobility—the Clergy—the Corporations—and the Monarch—and then has only the People themselves to provide for, and he is called to apply his principles; is there one here, who respects the rights of man, as a means to the end of public happiness, that would extend the principle, so as to give, in the language of the propositions of the gentleman from Norfolk, to every man an equal portion of political power, and make the sole measure of that equality, equal numbers, however they may be situated or combined? Sir, equal numbers are, in this matter, not always of equal value. Their value depends on their localities, their circumstances, and the interests which bind them together. Would any give, for example, to the county of Middlesex and city of London, power in proportion to the number of polls within the bills of mortality? Far less according to the property within those limits. The man who would do this, would prove himself to be a mere driveller—a poor closet speculator, who knew nothing of man, his interests, or his passions. I have selected this example, in order to show the limits I set to my own principle. So far would I be from giving to London and Middlesex, an average of power according to their numbers, that I would look to the lessons of experience taught us, and as the wisdom brought into practical operation in our sister States of Massachusetts and New-Hampshire. The former gives a term to the number of representatives of the town of Boston, whatever may be the number of inhabitants or their wealth; and both require, as the numbers of population multiply in a township, a larger and still larger number, in order to obtain another integer of political representation. They could not, in consistency with the preservation of the darling principle of political equality, (darling it is to me as to any,) mete out to large masses of population combined in one interest and directed by one will, a representation equal to that enjoyed by population of equal numbers dispersed in numerous smaller townships. Let us take lessons not from theory, but from practice—and that of these descendants of the pilgrims reads us a lesson which we may profitably consider.

What, then, becomes of the reproach attempted to be fastened on the friends of the amendment? that their object is to give superiority to wealth? So far from giving wealth the prevailing influence, I would, in the case to which I have resorted for illustration, strike it out altogether; and to counterpoise the consolidated force of numbers in the city, I would look to the wealth and numbers combined in the country—or apply the principle that has been adopted in Massachusetts and New-Hampshire, of requiring larger and larger numbers to entitle the growing masses of the population combined by one interest, to an additional representative in the Legislature.

For further illustration, let us take our position, not on foreign ground, not in a country where the Government and the community are the growth of so many centuries, but in our own land. Let us look at the State of New-York. Were I called upon to frame a system of organic law which should protect all the interests of so-

ciety, and preserve them in their proper orbits, I certainly would not give to their great commercial emporium a representation according to its numbers; far less would I add its two hundred millions of property, still farther to enhance its overgrown power. Gentlemen may not, perhaps, in our day, witness any very evil effects from such a feature in the Constitution of that State—but when that great city shall have extended itself over the whole island on which it is seated, and shall have engulfed all the neighbouring villages, then those who shall have been misled by the pragmatistical idea of measuring moral qualities by rules which apply to physical quantities only, may rue the day, when they adopted a principle which will have given the city of New-York practical dominion over the whole State.

Mr. Chairman, I am sensible that I have occupied too much time in these illustrations: but I was anxious, at the threshold of the discussion, to withdraw from gentlemen on the other side, the authority to turn upon us the reasoning we condemn in them. I know it would be easy to show, that if the principle contained in the amendment, were to be applied at all times and in all circumstances, such an application of it would sacrifice the main principles to an antagonist and subordinate one.

We renounce such a course. When we are called, not to sum up figures, but to ascertain the existing state of society; to take the measure of its various interests; to collate its diversities; to look at its physical aptitudes as a source of other diversities in future; I never will consent that I am bound to carry out one single principle beyond the necessity which is imposed by considerations of practical utility.

It is always useful to recur to fundamental principles, and I call back the debate to the point I started from, when I undertook to show, that the argument of epithet is assumed gratuitously, and most wantonly applied to our opinions.

I said I should endeavor to prove, from the concessions of gentlemen directly, or by clear implication, that the epithets employed by some of them were gratuitously assumed. In order to do so, let us fix the expression of this paramount, and all-in-all principle of theirs, and see how it works in the hands of those who attempt to fetter us with it. Let us give it, if not the precision, at least the terseness of a mathematical proposition, and throw it into a syllogistic form. All men are by nature equal: ergo, all men, when in society, should enjoy equal portions of political power. This is not strictly in the syllogistic form. It wants the minor proposition, and is what the logicians call an enthymeme. If, as gentlemen contend, this be the sole and all-sufficient principle in the construction of all just Government, then my first remark is, that the world, from the time of Solon till now, has been under a great mistake. It has been the idle prejudice of civilized man, every where, to suppose, that a Statesman is constituted, not by the conception of a theme, which is within the comprehension of a school-boy in his first form, but that it required the exercise of the higher faculties of the human mind. It has been thought till now, that an able Statesman was the product of labour; of sagacious and widely extended observation; of deep research; of clear induction from the treasures of experience; of power to bring within its grasp the whole horizon of human affairs, and laborious exercise of that power. But this, it seems, has been a mere prejudice; it must have been so, if the gentlemen are correct in maintaining, that the whole business of a Statesman is to understand and apply their propositions; and that, if he deviates in the slightest degree from it, he sacrifices that, without which, he must lose all his force—I mean the name of a republican: a cabalistic word brandished by the demagogue at the hustings, and made to work with magic force in the columns of the public prints. Without this, whatever his wisdom or his virtue, he is ostracised from public trust. The channels of public service are closed against him. Sir, this is a new patent mode of making a Statesman; a sort of labour-saving machinery, in which they are made with a celerity that nails are struck in a factory, and requiring intellect of no higher order to construct Governments, than that which computes the weight of the iron or the number of nails into which it is fabricated. This is the first consequence which follows from attempting to give simplicity to political science, and this alone is enough to ensure its condemnation. To attempt to provide for all the diversified interests of a mature people by such a proposition, is the height of political madness.

There is another value in this political theorem, by which all Republican Governments are made, and without which was not made any that was made. A theorem adapted to all purposes, it requires only the form of rules of arithmetic to put into complete operation; addition and subtraction, according to the pretensions of some gentlemen, as we have seen suffice to fix the principles that should govern this body. The other two rules, multiplication and division, suffice to reduce them to practise it.

It has another value. It is the grand catholicon, the political specific to make new, and repair infirm Constitutions. It also serves as an amulet for the physician to keep off all harms from former political transgressions, and those who profess full faith in it, shall have no reckoning to make, for acts and opinions of passed times. In these remarks I must be permitted to say, that I have no individual in view. I aim them

not. They are the suggestions of the moment, without particular reference to any one.

Well, Sir, with this mathematico-political theorem, your Statesman goes to work ; and the moment he tries to put it in practice, the case categorical becomes a case hypothetical. All men are possessed by nature of equal rights, ergo, all men in a state of society, should have equal portions of political power ; *if* they are not women ; *if* they are not under twenty-one years of age ; *if* they are not paupers ; *if* they are not insane ; *if* they are not convicted of crime ; limitations which I believe are conceded by the most thorough-going supporter of this new patent for Republicanism on the simple specification, before stated, though he may have no other title to that designation.

As he advances, his case categorical becomes more hypothetical. Yes, Sir, much more so. Look at the report of the Legislative Committee, and look at the other hypothesis by which it limits this grand theorem, for making a Republican Government. You find they have *if's* in abundance ; *if* he owns land ; *if* it is so many acres ; *if* it is of such value ; *if* he is a house-keeper ; *if* he has paid taxes ; *if* he resides in the State ; *if* he has resided in the county so many years ; *if* he owns an estate in reversion ; and so before he gets to work, he will have stricken from the numbers of the people, a mass equal to two-thirds of the whole—and then these gentlemen bring their doctrines to this ; all men in a particular predicament have equal political rights, and what that predicament is, we (the patentees) are to prescribe—all beyond the line we lay down, is damnable Heresy ; all within the line is Catholic and orthodox. But, why exclude any ? Reason, say they, instructs us, that children, who have minds not matured, cannot vote understandingly ; and the law declares that all under twenty-one, are to be viewed as children ; and our feelings tell us, that the sex ought not to contaminate its purity, by the pollutions of a political canvass. Very well, this is all fair. But, why make your opinions the standard ? Why is Republicanism to be emblazoned on your escutcheon, notwithstanding your admission of these modifications, and denied to others, who, on equally sound considerations, would make or admit other modifications ?

The gentleman from Brooke, (the Rev'd. gentleman from Brooke,) tells us, that those who do not choose to pass all the way on his straight line, (though they may think it leads to the hell of anarchy, not to the heaven of peace,) are wholly unphilosophical, and are acting in direct opposition to all the established principles of political gravity. I fear this analogy from the doctrine of gravity, is more close than that from his mathematics. I fear that the downward tendency of his scheme is so strong, as to put in requisition all the wisdom, prudence, and firmness here assembled to arrest its career, and even that, that may be unavailing.

The other gentleman from Brooke, sets his pipe to a different key, and his tune is, that the Government is oligarchical—a plain aristocracy—anti-republican, and, he says, to us of the East, you are insisting on your right to make us your political slaves, in order that you may keep your black slaves in subjection.

I would not take advantage of a warm expression uttered in the heat of debate, and hold the gentleman down to the literal meaning of the terms he employed, but I will refer it to himself, whether he has not sacrificed justness of sentiment to mere antithesis of expression ; whether his statement is not an exorbitant exaggeration, and his charge unwarranted : Whether he is not confronted by his own doctrine, and if so, whether candor and self-respect, do not demand that he shall retract his words ? Does that gentleman mean to say to paupers and minors, and the other persons he proposes to exclude from suffrage, (for he, I believe, is not one of the patentees,) you are slaves ? You are bondsmen ? And if not, will he predicate slavery of all those who are not precisely equal in power, numerically divided, when he does not predicate it of those who have none at all ?

Let us, then, have the argument disarmed of this reproach, that our present Government is anti-republican and oligarchical.

Let us come to the issue made up by those on the other side, who have forborne to press this argument of epithet ; for, most of those of the other side, have themselves renounced it. The question then is, not what is the principle which every true Republican requires in constituting a Republican Government, but first, are there no principles which limit it ? On this point all agree—most of the gentlemen on the other side admit, that with perfect consistency with Republican principles, the very limitation proposed by the amendment may be made, and that whether it should be made in this particular case, is a question of expediency to be decided by justly weighing all the considerations, which such a question involves. If so, then secondly, it is a mere question of degree. It is not the enquiry, what are the primary principles of Republicanism, but it is the enquiry, to what degree other and antagonist principles ought to arrest the march of this primary one.

[Here, upon an intimation of a wish that the Committee should now rise, Mr. S. stated, that he had arrived at a part of his argument where it could be interrupted

without affecting its conclusion, and gave way for a motion. The motion was made, and the Committee rose and reported progress, and the House thereupon adjourned.]

SATURDAY, NOVEMBER 14, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Catholic Church.

MR. STANARD, resumed his speech in support of the amendment of Mr. Green, proposing the mixed basis of representation in the House of Delegates :

I endeavoured yesterday to show from the reason of the case and the concessions of my opponents, either directly or by fair implication, that their argument of epithets was unfounded, and that the epithets they have attempted to fasten to the doctrines maintained by me and my coadjutors, have been gratuitously assumed, and wantonly applied by them.

I thought that I satisfactorily showed from both sources, that the question, how far the general principle, insisted on as the sole and exclusive rule in the construction of Republican Government, ought to be carried, was a question of degree and not of principle ; and that what we have to determine is, at what point that principle is to be intersected, traversed, and modified by other and controlling principles, which all must admit ought to be consulted in adapting a Government to the actual state of society.

Permit me now to attempt a farther illustration, by showing what must be done, if they shall prevail in establishing their proposition, either in the form in which it has been reported by the Legislative Committee, or according to the gloss which has been put upon it by the gentleman from Augusta. Their elementary proposition is this, that as all men are by nature equal, all men have a right to enjoy equal portions of political power ; and they insist that this must be carried out, or there is no such thing as a Republic. Now, I will give them this principle, and let them apply it to a mature condition of society, and then see how far they will be compelled to renounce some portion of it. In the nature of things, to the obtention of the desired equality, you must have given, first, the mass on which the principle is to operate, as a dividend ; then the given number of representatives as a divisor ; and applying this divisor to this dividend, the quotient will be the number of individuals to be represented by each Delegate. Then you come to the existing society—and you find dividing lines all over the State, which have existed, some of them, for two hundred years, and the population scattered in unequal masses within these lines. The number which your quotient indicates for one representative is, of course, an unvarying quantity—while the numbers to which it is to be applied, are all variable. One county contains three thousand free whites—another county eight thousand—and your quotient is five thousand—what are you to do ? Must you break up the county lines ? Must you add one county to another and sub-divide for the average ? Is this to be your process ? Is such a process practicable ? The gentleman from Augusta, I am sure, does not look to such a process ; none of the gentlemen avow themselves in favour of it. It would be cutting up not one, nor two, nor three of your counties ; but every existing partition of the State—every one—without exception. All the present lines, all of them, must be obliterated. And even when you shall have been reconciled to this, by any practical process to cut off and to define the several portions to be taken from one and added to another, so as to produce perfect equality between the counties or districts, is beyond the power of man.

If the principle cannot be thus applied, what is to be done ? What must be its effect in practice ? Here you have one county containing three thousand inhabitants, and another containing eight thousand ; while your invariable divisor is five thousand. Will you give the former of these counties a representative ? Suppose you do : and what will you allow to the second ? Not any more : but say, you give it two—yet I apprehend you would not give two to a county containing six or seven thousand. And what then ? Why then, a county containing eight thousand, will have two representatives, while a county containing six or seven thousand, will have one representative : and this is their exact mathematical proportion ! It turns out in practice so variant and unequal, that eight gives two, and seven one, and three as many as seven.

I shall not pursue this view of the subject farther : there can be no necessity of pushing it to other obvious consequences before this Assembly.

My next voucher for clearing away the incumbrances to our title to Republicanism, is the Constitution of this State—which shows the principle embodied and in a concrete form, and in that form consecrated by an authority which gentlemen invoke to their aid and then disparage. They all eulogize in the most exalted strains, the wisdom,

the virtue, the patriotism of our ancestors, and yet they endeavour to make their principles condemn their own work. Their patriotism, their virtue, their wisdom, their intelligence, are all set forth in order the more to consecrate the principles they laid down; but all these cannot mitigate the sentence of condemnation which is pronounced upon their labours, and on the structure which they themselves reared on these very principles.

But, the gentlemen have a salvo for discrediting at one time an authority which they cry up as irrefragable and infallible in every respect in which they want to make use of it; and that is, that while the principles they laid down are the result of mature reflection, the happy inductions of sagacious minds, from an extended view of past times, all these qualities were dissolved and dissipated by the hurry and alarm in which they constructed their work. That assumption has been shown to be inconsistent with historical facts.

They go in pursuit of some pretext, on which to discredit their own authority. It is catholic, as far as they choose to use it, and heretical, just as far as they wish to reject it. They indulged themselves in an elaborate examination of analogous provisions in the Constitutions of our sister States.

The gentleman from Loudoun, in particular, presented us with a most elaborate and extensive analysis, on this subject—all with a view to maintain the authority of the Bill of Rights, and to repudiate that of the Constitution.

To give the more emphasis to these precedents, it pleased that gentleman not only to bring, before us, in detail, various Bills of Rights, adopted in different parts of the Union, but to apprise the Committee, with more than usual solemnity, that these were not the work of men, intimidated by the presence of an enemy at their doors, and by the roar of hostile cannon, but the mature results of profound and tranquil investigation, when peace was in all our borders, and their authors enjoyed the advantage of the experience of the revolution, and the councils of many of the master spirits of that epoch. All these things were brought in solemn array, and for what purpose? To cast discredit on the work of our progenitors. But, surely, the evil genius of the gentleman from Loudoun must have been presiding, when he was allured to adopt this course.

Most unfortunately, the very circumstances, he so confidently relies on, when collocated together, and not presented in detached fragments, torn from their context, but compared with the work of the same men, in framing the Constitutions of the States, furnish an irrefragable argument against his pretensions.

In every one of the States, noticed by the gentleman from Loudoun, aye, in every one of them, without a single exception, (unless it be that modern scheme of representative Government, with which the State of New York has favored the world,) the work and structure of those very sages, with all their advantages of mature experience, and tranquil times, and deliberate investigation, show, most convincingly, the utter fallacy of the pretensions he upholds.

The Constitution of Massachusetts, of New Hampshire, of Maine, of Connecticut, of Vermont—all show, that this political dogma, in its adaption to a mature society, with interests far advanced, and long established—this idea of carving and cutting out the mass of society, so as to assign to each man an equal portion of political power, has not been attempted by them: and notwithstanding all the facilities, which the condition of some of these States, in respect to their localities, municipal arrangements, and state of society, afforded for the application of this principle of equality, having regard to naked principles only, it has been disregarded in one branch of their Legislature, and traversed by greater and stronger checks in the other branch, than any we propose to adopt. Let me tell him too, that though the feature does not now appear in the Constitution of Pennsylvania, yet if he will look into the proceedings of the Convention which formed it, he will find, that even in that State, homogeneous as it is in population, and uniform as it is in almost all its interests—in that Convention, containing some of the master-spirits of the revolution, and the standard republicans of the day, it was proposed to introduce the same limitation in the Senate of that State, which we propose, by basing representation, not upon the number of the taxable inhabitants only, but upon a ratio deduced from a combination of taxation and numbers of taxable inhabitants.

But is it not a little remarkable, that the gentleman from Loudoun, after going into such an elaborate investigation of the Constitution and Bill of Rights, of other States in this Union, should all at once have stopped, at that precise point, when he would have come in contact with States, whose interest and situation, in respect to population, are analogous to ours? North Carolina, South Carolina, Georgia, and Tennessee, are all kept carefully out of view. They probably do not deserve enquiry, precisely for the very reason which, of all others, ought to recommend their example to us, viz: a conformity of their interests to ours, and the claim of those interests, to the modifications in their political institutions, which we propose in ours.

My next voucher is the Constitution of the United States. Yes, Sir, the Constitution of the United States. And here, it pleased the gentleman from Loudoun, (I speak, of course, of the *tendency* of his remarks,) to disparage that instrument, and the eminent men who recommended it to the adoption of the American people, by holding up that series of papers, which I have so often heard gentlemen on this floor refer to as containing the articles of their political creed, (I speak of the *Federalist*,) as obnoxious to the criticism, that the arguments in one part of it directly traverse and contradict those used in another part. It gave me some surprise, I confess, from the known sagacity of that gentleman, that he had not found a solution for the apparent contradiction to which he alluded; that he had not discovered the means by which he at once would solve it completely; that he did not, as the authors of that work had done, discard from his mind the influence of one dominant principle, and allow the antagonist principles their proper place and effect in controlling it.

That would have explained all the seeming contrariety. It is worthy of remark, that in his zeal to sustain his proposition, not merely as a means, but with a steady gaze towards the end, he added to the principles of the Bill of Rights, the doctrine in one of those papers which regards numbers as one of the elements of power, and exultingly referred to it—and yet the very work furnishes direct condemnation of the use he proposes to make of it, that is, to show that numbers form the sole element of power.

What is the character of the Government of the United States? It is not a full and plenary Government for all purposes; but it is a complete political entity, for the purposes of conducting the foreign relations of the United States, and as between the States of the same confederacy to settle their differences as members of that confederacy. It is shorn of all power to interfere with the municipal regulations of the States; but its limitation to our foreign relations, does not change its classification. It does not cease to be republican, because it refers to external concerns only; yet it is, in effect, contended that the same Government, if applied to our internal concerns, is aristocratic and oligarchical. Surely, the limitation of the uses of its power does not qualify or change the designation of the Government itself; and if a Government is republican, when charged with a part of our concerns, it does not cease to be republican, if charged with the whole of our concerns as one people.

Now, look at the principles which enter into the Constitution of that Government. The Federal Government is a Government formed by an association of sovereigns; the Governments of the several States by associations of individuals. Now, it happens in respect to States, that the principle of their equality is not admitted by us only, but by all Christendom: all civilized people admit equality of States. Whether their Governments be republican or monarchical—whether political power be exercised by the people in person, or by their representatives, or by the autocrat upon his throne, none are denied equality among themselves. But the equality of individuals has not the same force of authority: that is denied by all the rest of Christendom. States are artificial entities—they are political corporations, and with us they are associated to form a Government, just as individual men would associate for the same purpose. Their primitive equality is confessed; none dispute it; yet how are these equals dealt with in the details of the Federal Government? Looking, indeed, to one of the departments of that Government, we find their equality preserved strictly; but if we look to other departments of it, we shall find, that other considerations have supervened; which political considerations required to be weighed, and due allowance to be made for, in order to effect the great end of Government, viz: the protection of all. In other departments, these entities are treated not as integral, but as representing different masses of population; and power is allowed them according to the proportion of those masses to each other; while, in a third branch of the Government, we find a compound principle made up of both combined. The Executive branch is the progeny of an union of these principles. There is an equality of the parties in one sense, and there is a difference of power in another; yet is not this a Republican Government? Will the gentleman from Loudoun, (Mr. Mercer,) or the gentleman from Brooke, (Mr. Doddridge) pronounce their anathema against it as an aristocracy, or an oligarchy? Look at the modification of the principle. In order to fix the relative dimensions of entities which are equal in one sense, one part of the population is allowed a value according to its numbers, and the other according to a certain proportion of its numbers.

Well, Sir, has this changed it into any other than a Republican Government? It is said, that this arrangement was the result of a compromise. Admitting this, I demand to know, whether all compromises are not the fruit of a modification of antagonist principles? Are they made by mere guess, in a manner perfectly arbitrary? Have they no principles to guide them? Or is not the compromise to fix the precise point where antagonist principles intersect each other, so as to give to both their due operation?

I refer to the Constitution of the United States, not merely to vindicate our scheme from the stigma which is attempted to be fixed upon it, but for another, and a more important purpose. That Government has been referred to, not only as an example to show the consideration of all population, bond and free, in the apportionment of political power, but because of its influence on this State, as a member of the confederacy, and subject to that Government; a Government, charged with the external relations of this, and the other States. In that Government, all the inhabitants of the Union are taken into account: from which arrangement, a large portion of the weight of this State in it, is derived. Expel that principle from the Constitution, and you at once contract the State of Virginia. You bereave it of one-third of its political dimensions, in its connexion with a Government, which in various forms exercises a more powerful sway over all the States, than is equal in amount to all the residuary power left in their possession. When the other States were called upon by the South to make the compromise, the same arguments, now so strenuously urged, were at hand to resist the claim. The arguments were heard: they were profoundly considered. They were weighed with all the temper, deliberation and sagacity which that eminent body could bestow. That body did not find the allowance of this claim an insuperable obstacle; nor did they consider it as fixing upon the Government the stigma of anti-republicanism. It is found in the Constitution. The principle has been questioned since. Its influence on the pending question, direct and incidental, has been urged on this House, by my friend from Chesterfield, with a force and eloquence which I cannot pretend to emulate. His argument had been anticipated by one gentleman, and it has been attempted to be answered by two others. In one of its members, it has been evaded and it has been entirely unnoticed in the other. The argument is this: If this assembly pronounce, that the infusion of this principle converts any Government from a republic to an aristocracy, can you consistently, when that declaration shall be invoked against you, refuse to abide by your own decree? You must consent either to exhibit an open, undisguised, and glaring inconsistency, or you must surrender your rights so soon as you are confronted by your own declaration. The argument goes still further. If you countenance and sustain this pretension, may you not expect that that will be attempted, which has already many political converts, though it has not yet been attempted in the Legislature? It has, I say, many warm advocates, viz: that this power is a State acquisition, and like its Literary Fund, ought to be made common property, and distributed to all parts of the State, according to the ratio of white population. Sir, is this a mere gratuitous suggestion, thrown out for the purpose of alarming this Assembly, and having no foundation in fact? Will the gentleman from Loudoun, and the gentleman from Brooke reply? Will they stand up in the face of this Assembly, and say that such a doctrine has not been gravely insisted on heretofore? I mean, urged as a matter of political speculation among others, to show that the interests of the West have been sacrificed? I bear testimony to the fact, that it has been so urged.

[Mr. Mercer here rose and said, that he had never heard such an idea broached either in or out of the House of Delegates.]

Sir, I did myself hear it urged on this floor at the time when the distribution of the Literary Fund was discussed in the Legislature.

[Mr. Doddridge here enquired to what distribution of the Literary Fund, does the gentleman allude?]

I allude to the distribution of it, among the counties of the State, according to the numbers of white population in them respectively.

[Mr. Doddridge then said, on that occasion, the member from Brooke was not present.]

If the gentleman from Brooke was not, another gentleman, who is a conspicuous member of this House, was present. It was said, on that occasion, that the people of the West had been injured by the unequal distribution of this power acquired in the General Government, and claimed as the common property of all the white inhabitants of the State; and one injury ought not to be made the foundation of another. But, Sir, the suggestion will have at least this value. I propound the question now. I desire to have the disavowal of the claim to an apportionment of the Congressional representation according to the numbers of free white population, now under bond, sealed and delivered: Is this claim now disavowed? Am I to understand that it is disavowed by the gentlemen? If so, I have their own authority against that doctrine in future. If not, the argument is left in its full force.

I said, that the other part of the argument had been evaded. Its spirit has not been met. How has it been eluded? The gentleman from Albemarle made an argument, which implied that he did not approve of, or justify the provision of the Constitution of the United States. I do not say, that he expressly condemned that provision, or renounced the claim, to apportion our representation in Congress, on what is called the Federal numbers, or that he explicitly declared what his sentiments were; but he certainly did renounce it by implication. An explanation was drawn

from him, which amounted to this, that wise men had doubted the propriety of this provision of the Constitution of the United States. Surely the gentleman did not wish me to suppose that he did *not* think so, because wise men did think so. I, therefore, say, as the case now stands before the Committee—

[Here Mr. Gordon asked leave to explain. He said he was sorry to have opinions imputed to him which he had not expressed. He had said that the propriety of the provision had been doubted by wise men, and that he should be of the same opinion, if it was to be made the basis of an aristocratic system of Government for Virginia. That was still his opinion.]

Sir, the gentleman is perfectly correct; and I represented him to have said what in explanation he avows he said. He did say that wise men had so doubted, but he did not express his own opinion further, than he should be opposed to the principle when made to exceed its function in the Government of the United States. We are left still in uncertainty as to what the gentleman thinks of the direct operation of the Federal Constitution in this part of it. How was the argument pressed by my friend from Chesterfield? He said to us, will you treat the principle on which rests a large portion of our power in the Federal Government, as if it would, being introduced into our own Government, contaminate it with aristocracy? and will you deny that it has the same influence in the other case? If you think so, then you are prepared, whenever the claim shall be made by the Northern States, to have that principle in the Federal Constitution abolished, or to own that we retain in it, this taint of aristocracy, because it serves our interests. This was his argument. And what answer was vouchsafed by the gentleman from Loudoun, (Mr. Mercer?) This: You have the power in your hands, and can keep it—it can never be surrendered but by your own consent—your *sic volo*. And is that an answer to the argument? Is that an answer to the enquiry, are you prepared to follow out your own principles, when the like appeal shall be made to you from another quarter? They say not one word to that. Respect for the gentlemen compels me to say, that when the claim shall be urged, they will surrender.

What, then, is the result on this branch of the argument? I wish I could express it with more force and precision. It is this: We maintain in its full spirit and extent, and say that it ought to be so maintained—the whole principle in the Bill of Rights—as an essential ingredient in all Republican Government; nay, as being so sacred that a Government, where it is not paramount, ceases to merit the epithet of Republican: but that that principle, (dear as it is—and it is dear to me—as giving to the whole mass, its flavor, relish, and nutritive quality,) is not to be taken separately and uncombined with other principles: That it is liable in its application, to be checked, controlled and modified by other principles, which make it sanative and salutary: and that the idea of giving to each and every man in the community equal portions of political power, is so far from being effected by counting numbers only, (disregarding their combinations,) that that will be the very means by which it must certainly be frustrated—and that the gentlemen, who are contending so strenuously, for the simple, naked, unmodified principle, will find, when it is reduced to practice, that it produces the very results which it is their avowed purpose to avoid.

And now, let me ask my highly esteemed friend from Augusta, whether, in these sentiments, he can find any warrant for saying that the friends of the amendment cast ridicule upon the Bill of Rights? and overthrow the very foundations of Government in their eager grasp for power? and whether a more dispassionate consideration ought not to exact from him the avowal that these imputations were hasty, and are not merited? Let us not be misunderstood. It may occur to some, that I have been anxious to make this vindication of the amendment, not only for the sake of my constituents, but that regard to self has had much sway in prompting the effort. Not so. Not so. Differing as I do, from the gentleman from Loudoun, in his opinions, I must also dissent from some of his sentiments. And though I can truly avow that self-vindication, apart from the important interests implicated in the question under discussion, has had but little or no influence, I can assure that gentleman, that I am no candidate for the Martyr's Crown. He, it seems, envies the distinction, and pants for the glory of martyrdom. I have no such aspiration. I do not wish to expose myself to trials, which well require heroic virtue to endure. I do not so certainly know, whether mine would avail me in the hour of need; I am sure I should not better bear by rashly courting the trial. I wish not, therefore, to tempt myself by making the experiment; nor can I consider the loss of popular favour, or the offices to which it may lead, as meriting the distinction of martyrdom. No, Sir. Yet I do not pretend to that stoical insensibility which is unconscious of the glow which public approbation imparts to the bosom. I am not insensible to popular applause, nor would I depreciate the value of popular favour. But that favour only which is spontaneous, and which is the best test of public approbation, is the object of my ambition. I value not that which is gained as a charitable dole, reluctantly bestowed on importunate solicitation—not that which is retained by the pliancy, which looking with

steady eye at the signs of the political Zodiac, conforms to the horoscope it there finds. I thank God I have so regulated my desires, that a very small portion of my happiness depends on such popular favour, or on the acquisition of office; and if for the opinions I on this occasion avow and maintain, I shall be stricken from the ranks of those on whom the rays of popular favour may or is to beam, I shall more deplore the infatuation which directs the blow, than suffer pain from its infliction.

I think I have shown that the question before us is now reduced to this: whether, on a full and fair survey of the actual condition of the Commonwealth; its past history; its existing and multifarious interests; its connexion with the Federal Government; and primarily, and above all, the peculiar location of one peculiar and important species of its property—any thing is due to those inductions, which can be fairly made from this survey, that ought to control or limit the sway of the (confessedly) primary principle of Republican Government?

The right in some form to the power we claim, has not been seriously questioned. The objection is, not that this power may not properly be conceded; but that, in the concession of this, we get a power beyond the necessity of the case on which we found our claim: not merely enough to protect this interest, but over persons and rights of a different kind. I mean not to enter at large on this argument. I could not do so, without bringing again before the Committee, many of those very able views which have already been much better presented by others.

Let me again call the attention of the Committee to the examples of other States, as being persuasive, if not irresistible, in this matter. I also call gentlemen's attention to the nature of the interest, and will endeavor to show what has not been distinctly unfolded by my coadjutors—that there is some object ulterior to that of protection against unjust taxation, which justifies the claim we advance. If in States, homogeneous in their population, and uniform in their condition, it has been found necessary to interpose a check either in the Senate, or by an apportionment of power to masses, so arranged as to control the power of mere numbers, is not the necessity enhanced incalculably, when we refer to the influence of this consideration in our own State? Do we claim protection for property only as such? The property we seek to protect, not merely serves the uses of man, but itself supplies the place of men. Its value does not consist in consumption—it is not mere brute matter, contributing to the comfort and ornament of life, but it consists of intelligent, sentient, responsible beings, that have passions to be inflamed, hearts to feel, understandings to be enlightened, and who are capable of catching the flame of enthusiasm, from the eloquent effusions of agitators, if not here, at least in other parts of the State: and who may not only be lost to their masters as property, but may change conditions, and become masters themselves; so far, at least, as the ravages of a servile war shall have any subject to be ruled over. These are the dangers which necessarily belong to the existence of this species of property within our borders. Are these considerations to have no weight? Will gentlemen still consider our slaves as mere brute matter? Will they shut their eyes to the fact, that there are and will continue to be political missionaries, who, with malignant purposes, or under the stimulation of a misguided philanthropy, industriously spread a contagion which no power may be able to arrest? Shall we shut our eyes and ears to all experience? Nothing is so easily propagated as such enthusiasm, when it comes with all the force of an apparent respect for human right, and a spirit of general philanthropy. Sir, is this the day when such principles will not be propagated? Are the people of the South so steady, as to be impregnably shielded against the sway of such a spirit? Can any gentleman look to the recent history of this country, and say that there are not some feelings, which, under the impulse of enthusiasm, may pass with the rapidity of lightning across the whole extent of this Union?

Looking to this subject, let me be permitted to state, in the presence of this audience, what I have often professed before, with a most perfect sincerity. I have told you that I entertain no distrust of the honour and sincerity of the people of the West; and further, that I did not distrust their sons, as the gentleman from Brooke considered the gentleman from Northampton to have done: and feeling this, I think it due to the candour which belongs to this debate, to declare my full and entire conviction, that if the power to the very uttermost of their claim, shall be transferred to the people of the West, their sense of justice will restrain them from wilfully doing the open and apparent wrong of levying unequal taxes on this species of property to the exonerating of property of a different kind. I do not believe they will do any such thing. There is not to be found in this land, any body of men prepared to commit gross, apparent and wanton wrong. Much less would I impute such a purpose to gentlemen from the West, some of whom, I am glad to regard as personal friends, and all of whom, I hope, will long continue to be brethren of the same political family. But, will this honesty be any guard against such influence as I have described? Sir, I dread not the vices of my brethren, but opinions that to them have the show of virtue. I fear not their meditated wrong, but their misguided philanthropy.

I extend the remark to the exercise of the taxing power, for objects in which we have little interest. Do I apprehend this from the wantonness of power and the recklessness of rapacity? I disclaim such a thought. No, Sir. I have no fears of their wilful injustice. But, is there any safe-guard against delusion on this subject? Can I shut my eyes against the light that beams from all experience, and shows the facility of persuading men that they are in the line of duty and patriotism, though interest alone stimulates the effort and sways the judgment? And on such occasions the virtues of the representative stand not as our security, but as the very source of our danger, when he shall think, that he is conforming to the wishes of his constituents, and cherishing the interests of all. I may say, therefore, without much violence to gentlemen's feelings, that if there are any dangers arising from the power of taxation, they are to be resolved into no distrust of their integrity, but that all the danger proceeds from the different views and different interests of parts and the whole Commonwealth, and the representative virtue of cherishing those of his constituents.

There is another view of the subject. They allow that we are entitled to some security, but insist that the form in which we ask it extends too far, and enables us to inflict the very injustice on them in other respects which we profess to fear from them on this. I call the attention of gentlemen to the different functions of the taxing power as in one, and in the other hand. With us it is conservative and defensive merely. We do not seek for its exercise by ourselves, but to prevent its exercise by others. In them, the danger is from action—not from the power's being fettered, but from its being left free.

I admit that the power, if given us for our protection, exists for other objects, and may be used for personal oppression. But, I beg leave to call the attention of gentlemen to the position on which I rest the argument—I have no distrust in the honour and virtue of the West—and I claim the same confidence as due to the East.—I anticipate in no quarter the exercise of mere arbitrary power; and I found the argument on that very principle: Their security is that which is furnished by considerations which they urge in vindication of the West. How can we oppress them in their personal rights without affecting all parts of the State equally? unless we be guilty of an open, confessed, naked act of arbitrary power? How can any Constitution be so framed as to guard against violence and arbitrary power? I turn gentlemen's argument against themselves—If any part of the Commonwealth shall have made up their minds to face the opprobrium of such conduct, your Constitution and all its guards cease to be of any value. No matter where power is by constitutional regulation, it cannot be retained. Resort must be had to an arbiter, and that arbiter sweeps your Constitution and your Republican Government together, from the face of the land.

And here let me notice one of the arguments of the gentleman from Augusta, (Mr. Johnson.) He made an ominous remark which I have not forgotten. He said, that “if we of the East had no slaves, their places would be supplied by white men.” In what signification did he make this remark? Suppose their places were filled by white men? Then we are asking much less than we are entitled to.

But, their places are not supplied by white men. What then? Are you to form a Constitution as if they were not here? As if they did not belong to the Commonwealth, and formed no part of its interests? The observation shows, either that we ask less than is our due, or it gives cause for the foreboding that the new Constitution is to be fashioned as if slaves were mere intruders here, to whose existence no regard is to be given.

Permit me to make another observation. I told you that in looking at this important and delicate interest, it was to be regarded not merely as a subject of taxation, but that we ought to look steadily on all the dangers which surround it. Is it necessary for me to tell this Assembly, that in regard to these interests, respect is to be had to legislation which affects it even as property? That a wise regard to interests and feelings of the Eastern part of the State, present an irresistible claim on our brethren of the West, not to push their theories so as to take away from us the power to govern our slaves, and make laws of police for them? By the transit of power to hands not acquainted with our situation and dangers, and shielded by a barrier of mountains, who have no fears to sharpen their intellect to the approach of evil, and who know not how to adapt laws to the wants, the condition, the feelings, and the passions of the slaves in regard to those who retain them in bondage, interests, not of property merely, but of life itself, are implicated; these, and all their dearest connexions.

I pass with much pleasure from such a subject, to a view more congenial to the spirit in which I entered this Convention. Sir, I came here not to exasperate, but to soothe the asperities of other minds: not to arrest the march of reform, (as far as reform ought to be allowed to go,) but to enter on the task of repairing the Constitution, in perfect good faith: with professions not upon my lips merely, but springing from my heart: not made on this floor to suit the occasion, but resolved on and pro-

mulgated before I came here. I reject as an unworthy suggestion, the idea, that the course of any member here is intended as a mere deception to beguile this Assembly, and to cheat the people out of their rightful claim to reform. It must be obvious to you, Sir, and to this Committee, that it is my earnest wish to avoid every topic calculated to disturb the tranquil, judicious, and candid consideration by this body, of every subject which comes before it. In the process of the debate, it has pleased many gentlemen who are in favour of adopting the report of the Legislative Committee, to represent the West as having suffered for years under the most cruel neglect of its rights.

They have been represented to us, as year after year, bringing their complaints to the Legislature, and as being either rudely repelled, or treated with the most callous indifference. Sir, I feel that it is in my power to show, that the principal ground of this complaint, is a gross mistake of the nature and state of things. Even the last and latest complaint; that which gentlemen urge upon us, as a most aggravated grievance; that is, the manner in which this Convention is constituted, is utterly without foundation. I regretted to hear the gentleman from Augusta urge this topic with a view to influence this body. After enumerating other causes of complaint, he reminded us of our responsibility resulting from the gross injustice committed in the apportionment by which the representation in this body was prescribed, and that a majority of this Assembly represented a minority of the people of the State.

I did not understand him to complain on this subject, that the question, whether there should be a Convention or not, was first propounded to the freeholders of the State? I am sure he could not complain of this. If any such complaint is heard in any quarter of this House, let it at once be silenced; for, this limitation was prescribed by the advocates of Convention themselves. It was those who sought to have this Convention a semblance, who volunteered in proposing such a restriction. The qualified voters of Virginia, to whom her sovereign power is confided, were those to whom they made their appeal to decide the question, whether the Convention should be called or no, and on the same principle they were made the electors of this body. Instead of claiming the utmost extent of the principle here insisted on, and giving uncontrolled sway to numbers of all classes, reference was had to the voters only. Now, I find from the result of the calculation of a friend in whom I have all confidence, that the following is the amount of representation in this body of the different sections of the State, having regard only to the number of voters. The whole number of persons charged, in 1822, with a land tax, was 92,000 in round numbers. This sum is to be taken as a dividend; 36,000, out of this 92,000, are on the land books of the counties beyond the Blue Ridge, and 56,000 on those East of that Ridge. According to the apportionment of that number, among the twenty-four Senatorial Districts, that dividend divided by twenty-four will give the quotient of 3,800 freeholders to each district. Take the 36,000 which includes every name on the land books for the counties beyond the mountains, divide that by 3,800, and the quotient is nine; nine districts, therefore, beyond the Ridge is the utmost claim that can be asserted by the West, and have they not nine? But, let us look further. That number of 36,000 includes all the names on the Commissioners' books in all the counties West of the Ridge. Now, I appeal to the candor of gentlemen of the West, and to the Sheriffs' returns, when I say that a large number of these names—one tenth at least—are the names of non-residents. Am I not correct? Is not much of that land ideal? And is not much of it owned by residents of the Eastern part of the State, for non-residents of the State? I earnestly desire, and it would give me inexpressible pleasure, to disabuse the minds of our Western brethren on this subject. I ask those conversant with the Western counties, to take up the land book and to say if one-tenth is not less than the due allowance. The consequence is, that they have nine districts, when, if the principle of the gentlemen from Norfolk and Augusta, (Mr. Taylor and Mr. Johnson,) were to be strictly applied, they would not have more than eight. They have then a larger representation than they are entitled to, and this, though we totally disregard the slave population of Eastern Virginia.

This view is profitable in its bearing on another object. These returns are for 1822, and therefore adapted to the augmented strength of the West at the present time. Now, permit me to use their own claim of rapid increase—and thus to show how far short these estimates must have been of the number of voters in the year 1817, when, by a new arrangement of the Senatorial Districts, the West was then allowed a larger representation in the Senate than they are now entitled to. I ask, therefore, whether in the change of the Senatorial Districts, instead of being depressed and defrauded, they have not been assigned even a larger share of political power than on their own principles they were entitled to. Yet, it is said, and said again, and great stress has been laid on the assertion, that they are languishing under the oppressive legislation of a hard-hearted minority. Look at their representation in the House of Delegates. They have eighty members out of two hundred and fourteen, that is, more than nine to fifteen. Reduce it to the proportion of eight to sixteen, and

their title on the same basis is only one-third of the entire number, viz : to seventy-one. During this whole time, therefore, while all these doleful complaints have been uttered, they have been in the practical enjoyment of representation ten per cent. greater than they can justly claim. Now, Sir, I do not bring this as a matter of reproach, or an item of debit or credit, but my sole object is to disabuse their minds and free them from the influence of imaginary grievances, and then bring them to the real questions before this body with all that spirit of conciliation, harmony and good will which a frank correction of errors, is calculated to produce ; cherishing, as I do, the earnest hope that the result of the labors of the Convention may conduce to the future good feeling, confidence and affection of different parts of the State. I do this that I may expel that festering sore, that they may be convinced that they have mis-conceived their own situation, that no wrong has been done them on their own principles, and that power has been meted to them by their own scales and by their own weights.

In the same spirit, and swayed by similar influences, I will now advert to the statement of the gentleman from Augusta, to show that on the very foundation he laid, if we disregard means and look only to results, the question is, in fact, reduced to a mere form of words.

But before I go to that, let me bring to the notice of the gentleman from Augusta the influence of the principle when reduced to practice, according to the terms of the resolution of the Legislative Committee, as explained by his coadjutor from Loudoun (Mr. Mercer,) viz : the principle of representation on the basis of white population. The gentleman from Loudoun took this process. He did not controvert the proposition contained in the resolutions of the gentleman from Norfolk, but maintained the report of the Legislative Committee, on the ground that the two were equivalents. He claimed that equal amounts of population would produce equal numbers of qualified electors. On this postulate, he assumed, that the total numbers of white persons in any region of the State was a fair exponent of the number of voters it would furnish, and the numbers of population and of voters, having the same ratio, however different their sum, the result would be the same, whichever should be resorted to, in making the apportionment of representation. If one hundred of gross population, wherever situated, gave ten voters and in that proportion, it would be just as accurate to take a gross population for your computation of the amount of representation, as to take the voters.

The gentleman from Augusta, does not deal with these equivalents, or go on these postulates. He has tried the effect, and has not conjectured that if a given number of whites, in one part of the State, furnish a certain number of voters, the same number of whites in any other part would furnish a like number of voters. He has found the postulate of the gentleman from Loudoun to be fallacious, and the result shows one of the most striking and irresistible proofs of the sagacity with which my friend from Chesterfield seized the true criterion of the question in debate. Though in its form his proposition was supposed to be revolting to the feelings of the West, the result of these calculations furnishes demonstrable proof of its correctness.

I need not go into an examination of the classifications of the gentleman from Augusta, made of the quantum of power to each portion of the State, deduced by his different processes. The necessity of this is removed by the fact that we have the amount in gross, and that the question is between the two sections of the State, divided by the Blue Ridge.

On the basis of qualified voters, on the Commissioners' books, the Western district has nine more members than its due in the lower House, and one more in the upper. The gentleman shakes his head when I designate the Blue Ridge as separating the rival interests of the State. Be it so. But let me tell him, that it is a matter of some little value to us, to look to any line. We can advance one step with the aid of the elements of apportionment we have obtained from his estimate, by first taking this primary division of the State. We can say these are to be the estimated amount of representatives beyond the Blue Ridge, and leave the sub-division to them. Leave that estimated for the East to us, and we will easily sub-divide. There will be no difficulty on this score. But, look to the estimated amounts for the sub-divisions of the State. What are they ? I could not take down the results of the gentleman's calculations, and so cannot speak with precision, as to the particular sums ; but, I received this impression from the whole, that taking the whole number of those who pay land tax in the East and West, divided by the Ridge, and giving them representation in proportion, and then making a re-partition between the two sections of the East, and the two sub-divisions of the West, I think the difference between the results of this, and an apportionment on the ratio, that the amendment under consideration supplies, will not amount to an unit. The gentleman may say, whether or not I am right. That the numbers do very nearly approximate, is certain. How much the difference may be, is unworthy serious deliberation. Here, then, the gentleman from Augusta, and the gentleman from Loudoun, stand on a ground of apportionment,

which leaves the four grand divisions of the State, almost as they will stand on the mixed basis.

If you take the Federal number and work by that rule, it will bring you to nearly the same result. Now, it deserves to be mentioned as a memorable fact, that this concurrence of three different processes, all leading to the same result, shows the justice and sagacity of the scheme of the gentleman from Culpeper (Mr. Green.)

He resorted to the plan of a mixed basis of taxation and representation, not arbitrary—nor with a view to claim and to conquer power, but on mature deliberation, weighing various interests as they exist—and not from mere speculation—and it does happen, such is the influence of the slave property, (which is not property merely, but men) on the other classes of persons and property, in the community, as to render it indispensable that they should be considered in the ratio. And it is another and most striking evidence of the sagacity and wisdom of those who originated the Federal number. It acts on the just principles of political economy. The slave population acts, not only as the laboring power of society, but it takes the place of men. Wherever slavery exists, and you look to the freemen of society for its government, and there is any property qualification, you arrive at the same object, or very nearly so, by adding three-fifths of the slave population, as by ascertaining all the voters, and apportioning your representation according to numbers.

This view of the subject is consoling. It presents us a point where all the processes meet and coincide: and then the only question is (seeing this is the result by either calculation,) not which ratio shall be employed just this moment, but what shall be fixed upon as the rule of future apportionments. On that subject, every consideration of wisdom and of convenience, requires that we discard at once, other modes of calculation, and take the easy, simple, practical plan of the Federal number, and make our apportionment by that.

Why are we to take this? Not arbitrarily, but because it agrees with the other processes, and because, if any other is resorted to, for the future rule, you force an artificial state of things, by holding out to politicians and individuals, inducements to produce it, with a view to an unequal distribution of political power. If you take taxation as your rule, legislation may be moulded, not by right principles, but sinister views to it; influence on political power and taxation may be managed, so as merely to affect the balance of that power.

If you take the rule of qualified voters only, then you encounter the difficulty of accurately determining their number. The very element of calculation is wanting. If you go to the Commissioners' books, you encounter the toil and expense of registering all the lawful voters throughout this land: and you encounter, besides, the active principle alluded to by the gentleman from Augusta, leading men to make a false and fraudulent representation of the number of those votes, and give an artificial exaggeration of it; and thus you will have on your books, a host of men of straw, who disappear at the polls. You do more. And I wonder that the strong and masculine mind of the gentleman from Augusta, did not see this danger, and repudiate the rule. If I understood him aright, there is no one who regards, with a stronger feeling of foreboding and solicitude, that part of our duty which consists in prescribing the qualification of voters, than the gentleman. I have the authority of his whole political life, (and the life of no man can be more confidently appealed to, to determine the future from the past,) for this assertion. And what must be the consequences, if he adopts this principle as a future test of political power?

The very first effect of it, will be to turn the thoughts of this Convention, not to the consideration of the reasons which legitimately belong to the subject, but to its influence on the grand question of power.

The effect will be, that you interpose a barrier to a fair, candid, and judicious decision of the questions affecting the limits of the Right of Suffrage. I am not sure that I am exempt myself from the operation of such an influence. I fear that my mind may be turned away, from considerations justly belonging to those questions, by the important and decisive influence of whatever principles we adopt, to regulate the Right of Suffrage, on the all-absorbing question now under consideration.

This is the inevitable effect of fixing upon the ratio of voters, as a principle of future action. But, what will be the effect in future? Fraud and simulation in fixing the number of voters. Insuperable difficulty will arise in getting at the real number of voters. And allowing you to get at it first, what will be the result hereafter? We propose, by the resolution in the report of the Legislative Committee, to extend the Right of Suffrage, so as to include many new classes of voters. We embrace all who are house-keepers, and have been assessed for, and have paid revenue taxes. I know not if it will be carried to that extent—but that has been proposed. But, assuming that that rule shall obtain, what is the number of qualified voters when we look to the numbers, not now, but in after time? When we fix the time the Census shall be taken, we cannot look to a former Census, but to that taken in the same year the apportionment shall be made; and that is to be the foundation of the allotment.

Well. And what is the expense at which the ascendancy of political power may be purchased? Aye, purchased?—put up to auction—and you the offerers. The delinquents in the payment of a county levy shilling tax will probably average one hundred and fifty or two hundred for each county, and they, it may be presumed, have not taxable property. The number of voters at this time, taking as the criterion of suffrage, the payment of a revenue tax, are probably about 35,000 West of the Ridge; and by the calculation of gentlemen on the other side, there are 15,000 or 20,000 more above the age of twenty-one, who either have no property at all, or no taxable property. You, Sir, well know, as every member of this Convention knows, that from the manner in which the assessments are made, every individual, by his own mere ipse dixit, may qualify himself to vote, so far as that qualification depends on having his name on the commissioner's book, and an assessment of a tax on property. Suppose the case of a contractor or manufacturer who has in his employ five hundred day-labourers, every one of them subject to his beck and call—though not one of them may own a dollar's worth of taxable or other property, yet every one of them may at pleasure, when called on by the commissioner, affect to own a horse or some property not subject to a higher tax than four cents, and give in that as property owned by him and liable to a revenue tax; and this tax being paid, he ranks as a voter, and more than that, he will enter into the computation when representation is to be apportioned. By this process, 20,000 may be added to the number of voters, at an expense of \$500, and the addition of this 20,000 may, nay, will change the entire balance of political power. You would thus put up that balance at a wretched auction, and sell it for a miserable pittance. Will gentlemen close their eyes to this view of the subject? If we are to proceed in this downward course, let us go the whole length at once, and not require these petty frauds to bring upon us all the practical consequences of the utmost extreme to which we may go in extending the Right of Suffrage. Let us at once adopt the plan of Universal Suffrage—admit paupers and all to the polls. Let us give full efficacy to the so much loved principle of numbers to its whole extent. Let us no longer struggle with each other under vain disguises, but consent like men in the face of day, that we will take Universal Suffrage as one of the principles of the Constitution.

I appeal to the gentleman from Fairfax, (Mr. Fitzhugh,) the gentleman from Augusta, (Mr. Johnson,) the gentleman from Brooke, (Mr. Doddridge,) and to all the gentlemen on that side the House, if they do not render this almost inevitable; if they resort to such a principle as is now proposed, not for the present only, but for all future times, as the rule for the apportionment of representation: and then I solemnly ask them, are they prepared with their opinions on the subject of Suffrage, to incur this consequence?

Sir, I renounce it. I call on others, and especially the gentlemen to whom I have appealed, to join me in renouncing it, and to unite to furnish some ground on which all can meet, and this vexed question be terminated, at least, so far as results are concerned. Let us renounce all our processes. This I hold out to our antagonists as an olive branch—I tender it as a peace-offering—let us renounce all our processes, and take results and fix *them* in the Constitution, and wrangle no longer about a form of words. Let us endeavor to fix on some principle to guide us in all our future changes. But if we cannot do this, then let the Constitution be silent, as to the rule to govern in future, and leave to future times to provide for future exigencies. Not that I prefer or approve the omission in the Constitution of some rule applicable in such exigencies. I would acquiesce in it, however, rather than continue the tedious and pernicious struggle in which we are engaged. If our brethren in the West will discharge from their minds imaginary injuries, and unseasonable fastidiousness, there is a principle in which we all might meet, simple, practicable, already established, and sustaining a most important interest of the State: a principle which adapts itself to all changes—and which, if the prospects held out in the West, be not the creations of fancy, but the prophetic augury of wise observation, will carry there, along with its increasing prosperity and population, the power which is its due.

I have already adverted to the principles on which I became a member of this Convention. They were known to the public before I became a depository of the trust I hold here, and permit me to say to the gentlemen of the West—brethren of the same community, if my wishes shall prevail, brethren of the same community, we will remain in all time to come; for I will not permit my mind to indulge even in the hypothetical anticipation of a state of things that would reconcile me to a separation of the State, or to a disunion of the United States. In that term *disunion*, are included all the master ills that can affect a people or a State. Though we may, and certainly will, suffer less by the separation than the West, how heart-sickening is this estimate, not of blessings, but of woes! Come disunion when it may, it is due to the candour of this debate, to say, that strong as we are, it will bring to us a measure of evil, at least equal to that which our Northern neighbours will suffer. Nay, I fear, that if the extremity of suffering to which the several parts of the Union would be

exposed by so disastrous an event, could be accurately gauged, the painful pre-eminence of superior suffering would be found to belong to the Southern States.

I have not myself, been indifferent to the interests of the West. I am a friend to internal improvement. I have manifested it not by professions merely, but by acts in discharge of my solemn duties as a member of the Legislature. To the gentleman from Loudoun, (Mr. Mercer,) I allow the meed of praise, of being the author of the law which established the Board of Public Works, and munificently endowed it. To his zeal and influence, its success is mainly to be ascribed—If praise it be, I may claim for myself, that which belongs to an humble but earnest ally in the same cause. It had my support—and therein, I think I gave no indication of hostility to Western interests. I still continue the friend of internal improvement within those limits which its true friends are disposed to assign to it. I am hostile to gorgeous and visionary schemes, calculated only to delude the public mind, to play before the imagination the image of a great but unattainable good, or if not unattainable, to be accomplished only at a cost more than all the benefit it can yield will counterbalance. The true test of the expediency of attempting improvements of every kind, is that which was laid down by my friend from Augusta, (Mr. Johnson.) Let that be always applied, and with caution and care. When I see presented to me a scheme for any work for improving the state of the country, and I find it to be such, that those who receive the aid will be able themselves to return the sum expended, or a reasonable interest on it, I shall always be willing to advance for their aid the treasure and credit of the State. And let me add, that this is not a singular sentiment by any means in the Eastern portion of the State: and nothing can exterminate that feeling and turn all the kindly and wholesome affections of the people of the East, to gall and bitterness, but a callous indifference to the mighty interests they hold, and the tremendous dangers to which those interests are exposed, and expose those who hold them. If the East shall find or have just cause to suspect that callous indifference, not to their property merely, but to their happiness and their safety; not to a matter of pence and farthings, but to their existence itself; the effect will be a state of constant inquietude, of uninterrupted apprehension—a total destruction of quiet and happiness. If to this indifference there be added a grasping and intractable spirit—a resort to themes of angry declamation to overbear by passion and prejudice, and delusion, instead of weighing with candour their claims, and estimating them with the kindness of fraternal feeling—then, that will be done in the East, which some gentlemen think has been done in the West. There will be concert and combination. Stimulated by the feelings produced by that most intolerable evil, and ever-present sense of insecurity, they will regard the inexorable authors of it, with fierce and angry hostility, and every collision will heat the blood, and tend to melt into one common mass, all their interests and passions, and then the two divisions of the State will stand confronted with each other; with passions aroused; fraternal feelings exasperated into bitterness; and then the minority in the East, impelled by one feeling, and directed by common will, will, (as the gentleman says that of the West has done,) practically control the power of the majority. The tendency of the claims so inexorably urged in total disregard of the rights and security of the East, is to break the cement which has heretofore so consolidated Western feelings and interests, and to fuse all the people of the East, as it were, into one body having but one soul.

I invoke gentlemen to take this view—I ask them, whether they can think of acting so as to produce this violent wrenching of all the feelings which ought to bind us as members of one political family, and plant a thorn in the wound made by the violent divulsion which will rankle for all time to come, and as an eloquent advocate of American rights said, in the British Parliament, in an analogous case, produce that *immedicabile vulnus*, for which time has no lenitive, and no physician a cure.

Mr. Stanard having resumed his seat, the question was propounded from the Chair, and after a pause, seemed likely to be taken, when

Mr. RANDOLPH rose, and addressed the Committee as follows:

Mr. Chairman: It has been with great disappointment, and yet deeper regret, that I have perceived an invincible repugnance on the part of gentlemen representing here, a large portion of the Commonwealth, extending from Cape Henry to the Mountains, along the whole length of the North Carolina line, that portion of it in which my own district is situated, to take a share in this debate—a repugnance not resulting—I say so from my personal knowledge of many of them—not resulting from any want of ability, nor from the want of a just, modest, and manly confidence in the abilities they possess. I have looked to Norfolk; I have looked to Southampton; I have looked to Dinwiddie; I have looked to Brunswick, for the display of talent which I knew to exist: but, Sir, I have looked in vain.

And it is this circumstance only—I speak it with a sincerity, I have too much self-respect to vouch for, which has induced me to overcome the insuperable aversion; insuperable until now; that I have felt, to attract towards myself the attention of the Committee.

As long as I have had any fixed opinions, I have been in the habit of considering the Constitution of Virginia, under which I have lived for more than half a century, with all its faults and failings, and with all the objections which practical men—not theorists and visionary speculators, have urged or can urge against it, as the very best Constitution; not for Japan; not for China; not for New England; or for Old England; but for this, our ancient Commonwealth of Virginia.

But, I am not such a bigot as to be unwilling, under any circumstances, however imperious, to change the Constitution under which I was born; I may say, certainly under which I was brought up, and under which, I had hoped to be carried to my grave. My principles on that subject are these: the grievance must first be clearly specified, and fully proved; it must be vital, or rather, deadly in its effect; its magnitude must be such as will justify prudent and reasonable men in taking the always delicate, often dangerous step, of making innovations in their fundamental law; and the remedy proposed must be reasonable and adequate to the end in view. When the grievance shall have been thus made out, I hold him to be not a loyal subject, but a political bigot, who would refuse to apply the suitable remedy.

But, I will not submit my case to a political physician; come his diploma from whence it may; who would at once prescribe all the medicines in the Pharmacopœia, not only for the disease I now have, but for all the diseases of every possible kind I ever might have in future. These are my principles, and I am willing to carry them out; for, I will not hold any principles which I may not fairly carry out in practice.

Judge, then, with what surprise and pain, I found that not one department of this Government—no, not one—Legislative, Executive or Judicial—nor one branch of either, was left untouched by the spirit of *innovation*; (for I cannot call it reform.) When even the Senate, yes, Sir, the Senate, which had so lately been swept by the besom of innovation—even the Senate had not gone untouched or unscathed. Many innovations are proposed to be made, without any one practical grievance having been even suggested, much less shown.

Take that branch of the Government which was so thoroughly reformed in 1816, and even that is not untouched. Sir, who ever heard a whisper, *ab urbe condita* to this day, that the Senators of Virginia were too *youthful*? I never heard such a sentiment in my life. And in the House of Delegates, what man ever heard that the members—I speak of them, of course, in the aggregate—that the members were too young? Yet, even there—it is to be declared, that all men who might be elected to that body between the ages of twenty-one and twenty-four, are to be disfranchised; and as regards the Senate, all between the ages of twenty-one and thirty. Yes, Sir, not only the spring and seed-time, but the summer and harvest of life; that delightful season which neither you, Sir, nor I can ever recalc; the dearest and the best portion of our lives; during this period of nine years, the very prime of human life, men are to be disfranchised. And for what? For a political megrim, a freak—no evil is suggested. The case is certainly very rare, that a man under thirty is elected a member of the Senate. It will then be said, there is no privation, and, therefore, no injury. But, Sir, there is a wide difference between a man's being not elected, and a fundamental law stamping a stigma upon him by which he is excluded from the noblest privilege to which no merit or exertion on his part can restore him. But, all this, I suppose, is in obedience to the all-prevailing principle, that *vox populi vox dei*; aye, Sir, the all-prevailing principle, that Numbers and Nunters alone, are to regulate all things in political society, in the very teeth of those abstract natural rights of man, which constitute the only shadow of claim to exercise this monstrous tyranny.

With these general remarks, permit me to attempt—(I am afraid it will prove an abortive attempt) to say something on the observations of other gentlemen, to which I have given the most profound attention I am capable of. Sir, I have no other preparation for this task, than a most patient attention to what has been said here, and in the Committee, of which I was a member, and deep, intense, and almost annihilating thought on the subjects before us. This is all the preparation that I have made. I cannot follow the example which has been set me. I cannot go into the history of my past life, or defend my political consistency here or elsewhere. I will not do this for this reason: I have always held it unwise to plead 'till I am arraigned, and arraigned before a tribunal having competent and ample jurisdiction. My political consistency requires no such defence. My claim to Republicanism rests on no patent taken out yesterday, or to be taken out to-morrow. My life itself is my only voucher, a life spent for thirty years in the service of the most grateful of constituents.

The gentleman from Augusta, who occupies so large a space, both in the time and in the eye of the House, has told us that he fought gallantly by the side of his noble friend from Chesterfield, so long as victory was possible, and that it was not until he was conquered, that he grounded his arms. The gentleman farther told us that, finding his native country and his early friends on this side the mountain, on whose behalf he had waged that gallant war—he found he hesitated what part to take *now*, until his constituents, aye, Sir—and more than that, his property, on the other side—and he

has taken his course accordingly. Well, Sir, and will he not allow, on our part, that some consideration is due to our constituents, although they happen to be our neighbours; or to *our property*, although we reside upon it? Are either or both less dear on that account?

But, Sir, I put it to the Committee, whether the gentleman is not mistaken in point of fact? Whether the victory *is* indeed won? Every one, to be sure, is the best judge whether he is beaten or not. But, I put it to the gentleman himself, whether, if he were now fighting along side of his noble friend from Chesterfield, the scale might not possibly turn the other way? No man, however, is compelled to fight after he feels himself vanquished.

Sir, I mean no ill-timed pleasantry, either as it regards the place where it is uttered, the person to whom it refers, and least of all, as it respects him by whom the remark is made, when I say, that in this prudent resolution of the gentleman from Augusta, he could not have been exceeded in caution and forecast by a certain renowned Captain Dugate Dalgetty himself. Sir, the war being ended, he takes service on the other side:—the sceptre having passed from Judah, the gentleman stretches out his arm from Richmond, to Rockfish Gap, to intercept and clutch it in its passage.

Among various other observations with which he favoured the Committee, he protested with great earnestness against opinions relating to the Federal Government or its administration being introduced here. Sir, the gentleman is too great a lawyer not to know, that the Federal Government is *our* Government:—it is the Government of Virginia:—and if a man were disposed to shut his eyes to the Constitution, and the administration of the Federal Government, he could not do it: they would be forced open, Sir, by the interests, and feelings, aye, and by the passions too, which have existed, do exist, and will continue to exist, as long as Virginia herself shall have existence.

It is not the least of my regrets that one of the most inevitable consequences of these changes, if they shall take effect, will be totally to change all the politics of Virginia in reference to the Federal Government; (without considering the hands in which it may happen to be placed,) and I do confidently believe, that the very greatest cause of them is to be found in the hope of producing that all-desired change. In many cases I know it to exist, of my own personal knowledge.

Sir, we can't shut our eyes to the Federal Government.

When in 1783, the Convention of Virginia adopted the Federal Government as a part of her Constitution, they effected a greater change in our Constitution than the wildest reformer now suggests to us: to estimate the amount of that change we must have reference to her interests and power at that day: if not, we may call *ourselves* Statesmen, but the world will apply to us a very different epithet. Among innumerable causes why I now oppose a change, is my full recollection of the change which was then brought about. I have by experience learned that changes, even in the ordinary law of the land, do not always operate as the drawer of the bill, or the Legislative body, may have anticipated: and of all things in the world, a Government, whether ready made, to suit casual customers, or made per order, is the very last that operates as its framers intended. Governments are like revolutions: you may put them in motion, but I defy you to control them after they are *in* motion.

Sir, if there is any one thing clearer than another, it is that the Federal Constitution intended that the State Governments should issue no paper money; and by giving the Federal Government power "*to coin money*," it was intended to insure the result that this should be a hard money Government:—and what is it? It is a paper-money Government. If this be the result, in spite of all precautions to the contrary—(Sir, this is no time, as the late illustrious President of the Court of Appeals was wont to say, to mince words,) and these Governments have turned out to be two most corrupt paper-money Governments, and you could not prevent it; how can we expect, now, to define and limit the operation of new and untried principles? For new and untried they are; and if God lends me strength, I will prove it.

I have very high authority—the authority of the gentleman from Augusta—to say that the Federal Government was intended to be charged only with the external relations of the country: but, by a strange transformation, it has become the regulator, (abandoning the Colonial trade by negligence, or incapacity, or both, and crippling all our other trade,) it has become the regulator of the interior of the country; its roads; its canals; and, more than all, of its productive, or rather its *unproductive* labour, (for they have made it so.)

Yet, with these facts staring us in the face, we are gravely told not to look at the Federal Government at all. And this in the Government of Virginia, where, to use a very homely phrase, but one that exactly suits the case, we can't take a step without breaking our shins over some Federal obstacle.

Sir, I can readily see a very strong motive for wishing to do away all past distinctions in politics, to obliterate the memory of old as well as of recent events, and once more to come with something like equal chances into the political lottery.

Let me return to my illustration. What provision is there, Mr. Chairman, either in the Constitution of Virginia or the Constitution of the United States, which establishes it as a principle, that the Commonwealth of Virginia should be the sole restraining and regulating power on the mad and unconstitutional usurpations of the Federal Government? There is no such provision in either:—yet, in practice, and in fact, the Commonwealth of Virginia has been, to my certain knowledge, for more than thirty years, the sole counterpoise and check on the usurpations of the Federal Government—so far as they have been checked at all: I wish they had been checked more effectually.

For a long time, our brethren of the South, because we were the frontier State of the great Southern division of the Union, were dead to considerations to which they have, I fear, awaked too late. Virginia was left alone and unsupported, unless by the feeble aid of her distant offspring, Kentucky. It is because I am unwilling to give up this check, or to diminish its force, that I am unwilling to pull down the edifice of our State Government from the garret to the cellar; ay, down to the foundation stone. I will not put in hazard this single good, for all the benefits the warmest advocate of reform can hope to derive from the results of this body.

The gentleman from Augusta told us, yesterday, I believe, or the day before, or the day before that, (I really do not remember which,) that slaves have always been a subject of taxation in Virginia, and that a long while ago neat cattle had also been taxed. In regard to these horned cattle, I think they have occupied full as much attention as they are entitled to in this debate. But, let it be remembered, that we were then, not taxing the cattle of the *West*, for there was no West, but a few scattered settlements beyond the mountain; and what we have been discussing was the proportion of taxes paid by the East and the West. No sooner was an interest in this subject established beyond the mountains, than the tax was laid aside. At that time, Sir, the Commonwealth of Virginia was throughout, a slave-holding Commonwealth: (would to God she were so now.) And is it then so wonderful that slaves should have been a subject of taxation? Yes, Sir: Virginia was then not only throughout, a slave-holding, but a tobacco-planting Commonwealth. You can't open the Statute Book—I mean one of the Old Statute Books, not those that have been defaced by the finger of reform—and not see that tobacco was, in fact, the currency, as well as staple of the State. We paid our clerks' fees in tobacco: verdicts were given in tobacco: and bonds were executed payable in tobacco. That accounts for it all. While a large portion of the State has ceased to be a slave-holding, and a still larger portion has ceased to be a tobacco-planting community, the burden has rested on the necks of a comparatively small, unhappy, and I will say it, a proscribed caste in the community. Not that any such effect was intended, when all were tobacco-planters, taxes on slaves and tobacco were fair and equal. But, time, the greatest of innovators, has silently operated to produce this great and grinding oppression. My nativity cast my lot there. I am one of them. I participate in all their interests and feelings. And if I had been told, until I had the evidence of fact to prove it—that one of the great slave-holding and tobacco-planting districts, would lend itself to the support of the report of the Legislative Committee, unmitigated, or, to use a term for which I am indebted to the gentleman from Spottsylvania, *unmollified*, or *undulcified* by any thing to give it a wholesome operation, I would not have believed it. Nothing but ocular and auricular demonstration, would have made me believe it possible. For my part, I had not only, as the gentleman from Chesterfield has said, never have been born, but, being born and grown up as I am, it were better for me that a mill-stone were hanged about my neck, and I cast into the uttermost depths of the sea, than to return to my constituents after having given a naked vote for the report of the Committee.

Sir, when I speak of danger, from what quarter does it come; from whom? From the corn and oat growers on the Eastern Shore, the Rappahannock and the Pamunkey? From the fishermen on the Chesapeake? The pilots of Elizabeth City? No, Sir—from ourselves—from the great slave-holding and tobacco-planting districts of the State. I could not have brought myself to believe it—nothing could have persuaded me to believe, that the real danger which threatens this great interest, should spring from those districts themselves. And, arrogant and presumptuous as it may appear in me, (these epithets have been applied to us by the gentleman from Augusta,) I will risk any thing short of my eternal salvation on the fact, that when the people of that region come to understand the real question, you will as soon force ratsbane down their throats, as a Constitution with such a principle in it.

The gentleman from Augusta told us, yesterday, or the day before, I cannot be certain as to the precise day, with some appearance as if it were a grievance, that the people had interfered; and he asked if we are to be instructed out of our seats? I answer, yes. Such as cannot be instructed *in* their seats, must be instructed *out* of their seats. He says the voices of the people from county meetings and cross roads and taverns, will come here and interrupt the harmony of our deliberations.

I trust they will. Though the people have hitherto been supine, on this side the mountains, I trust they will take the matter into their own hands. I hope they are beginning to rouse from their torpor: and I know it. I will state one fact, to show that the current of public sentiment, is fast setting in on our side. I do not say whether it was for or against us before. I have heard, not one, not ten, not fifty, (and when I say not fifty, I mean not less, but more than that number,) of intelligent men declare, that if by any possibility, they could have foreseen, (poor innocents,) that such were to be the results, they never would have voted for this Convention. In the mean while, not a single convert has been made from our cause; if there has, name the man; I could name ten, twenty, aye, fifty; and if I were to resort to documentary evidence, I could name more. So far am I from being one of those, who wish to precipitate the question, I am glad, I rejoice in the prospect, that our Session will run into that of the Virginia Assembly. In politics, I am always for getting the last advices. You can never get at the true temper of the public mind, till the occasion presents itself for decisive action.

I have made, and shall make, no disclaimer of having intended offence to any person or party in this body—and this for the same reason I before stated. I never will plead, till I am arraigned by a competent tribunal—and the disclaimer would be misplaced. Gentlemen on all sides, have spoken of the *intention* with which they are demanding power, (for the gentleman from Augusta lifted the veil, and owned to us, that power, and power alone, is the object he is in pursuit of.) Sir, I mean no disrespect, when I say, that however important it may be to themselves, to me it is a matter of perfect indifference—I speak in reference to the operation of their measures—whether their intents be wicked or charitable. I say, the demand which they make, is such as ought to alarm every considerate and fore-thoughted man; and that there is nothing to mitigate that alarm, in the stern, unrelenting, inexorable, remorseless cry, which they raise for power, and their determination to listen to no compromise. One gentleman, indeed, has abated somewhat, of his tone of triumph. Perhaps, the prospect of speedy enjoyment, has calmed his exultation, and sobered him down.

Mr. Chairman, since I have been here, the scene has recalled many old recollections. At one time, I thought myself in the House of Representatives, listening to the debate on the Tariff; at another time, I imagined myself listening to the debate on the Missouri Question; and sometimes I fancied myself listening to both questions debated at once. Are we men? met to consult about the affairs of men? Or are we, in truth, a Robinhood Society? discussing rights in the abstract? Have we no house over our heads? Do we forget, that we are living under a Constitution, which has shielded us for more than half a century—that we are not a parcel of naked and forlorn savages, on the shores of New Holland; and that the worst that can come is, that we shall live under the same Constitution that we have lived under, freely and happily, for half a century? To their monstrous claims of power, we plead this prescription; but then we are told, that *nullum tempus occurrit Regi*—King whom? King Numbers. And they will not listen to a prescription of fifty-four years—a period greater, by four years, than would secure a title to the best estate in the Commonwealth, unsupported by any other shadow of right. Nay, Sir, in this case, prescription operates *against* possession. They tell us, it is only a case of long-continued, and, therefore, of aggravated injustice. They say to us, in words the most courteous and soft, (but I am not so soft as to swallow them,) “we shall be—we will be—we must be your masters, and you shall submit.” To whom do they hold this language? To dependents? weak, unprotected, and incapable of defence? Or is it to the great tobacco-growing and slave-holding interest, and to every other interest on this side the Ridge? “We are numbers, you have property.” I am not so obtuse, as to require any further explanation on this head. “We are numbers, you have property.” Sir, I understand it perfectly. Mr. Chairman, since the days of the French Revolution, when the Duke of Orleans, who was the richest subject, not only in France, but in all Europe, lent himself to the *mountain* party in the Convention, in the vain and weak hope of grasping political power, perhaps of mounting the throne, still slippery with the blood of the last incumbent—from that day to this, so great a degree of infatuation, has not been shown by any individual, as by the tobacco-grower, and slave-holder of Virginia, who shall lend his aid to rivet this yoke on the necks of his brethren, and on his own. Woe betide that man! Even the Duke of Orleans himself, profligate and reprobate as he was, would have halted in his course, had he foreseen in the end, his property confiscated to the winds, and his head in the sack of the executioner.

I enter into no calculations of my own, for I have made none, nor shall I follow the example which has been set me. I leave that branch of the argument, if argument can be called, of the gentleman from Augusta, to be answered by himself.

The gentleman told us, the day before yesterday, that in fifteen minutes of the succeeding day, he would conclude all he had to say; and he then kept us two hours, not by the Shrewsbury clock, but by as good a watch as can be made in the city of

London. (*Drawing out and opening his watch.*) As fifteen minutes are to two hours—in the proportion of one to eight—such is the approximation to truth, in the gentleman's calculations. If all the calculations and promises of the gentleman from Augusta, which he held out to gull us—I speak not of his intentions, but only of the effect that would have ensued—shall be no nearer the truth than these, where then should we be who trust them?

In the course of what I fear will be thought my very wearisome observations, I spoke of the Tariff Law. When the people of the United States threw off their allegiance to Great Britain, and established Republican Governments here, whether State or Federal, one discovery since made in politics, had not yet entered into the head of any man in the Union, and which, if not arrested by the good sense and patriotism of the country, will destroy all Republican Government, as certainly and inevitably as time will one day destroy us. That discovery is this: that a bare majority—(the majority on the Tariff was, I believe, but two—my friend, behind me, (Mr. P. P. Barbour,) tells me that I am right—and on one important branch of that law, that I mean, which relates to cotton bagging, the majority was but one, and that consisted of the casting vote of the Speaker,) that a bare majority may oppress, harass, and plunder the minority at pleasure, but that it is their interest to keep up the minority to the highest possible point consistent with their subjugation, because, the larger that minority shall be, in proportion to the majority, by that same proportion are the profits of the majority enhanced, which they have extracted and extorted from the minority. And after all our exclamations against this crying oppression; after all our memorials and remonstrances; after all our irrefragable arguments against it, (I refer not to the share I had in them, I speak of the arguments of other gentlemen, and not of my own,) shall we in Virginia, introduce this deadly principle into our own Government? and give power to a bare majority to tax us *ad libitum*, and that when the strongest temptation is at the same time held out to them, to do it? It is now a great while since I learned from the philosopher of Malmesbury, that a state of nature is a state of war; but if we sanction this principle, we shall prove that a state, not of nature, but of society, and of Constitutional Government, is a state of interminable war. And it will not stop here. Instructed by this most baneful, yes, and most baleful example, we shall next have one part of a county conspiring to throw their share of the burden of the levy upon the other part. Sir, if there is a destructive principle in politics, it is that which is maintained by the gentleman from Augusta.

But we are told that we are to have a stay of execution. "We will give you time, say the gentlemen: only give us a bond binding all your estate, secured by a deed of trust on all your slaves." Why, Sir, there is not a hard-hearted Shylock in the Commonwealth, who will not, on such conditions, give you time. Are we so weak, that, like the spend-thrift who runs to the usurer, we are willing to encounter this calamity, because it is not to come upon us till the year 1836? A period not as long as some of us have been in public life? Sir, I would not consent to it, if it were not to come till the year 2056. I am at war with the principle. Let me not be told, that then I am at war with the Bill of Rights. I subscribe to every word in the Bill of Rights. I need not show how this can be. It has been better done already by the gentleman from Spottsylvania, (Mr. Stanard,) to whom I feel personally indebted as a tobacco-planter and a slave-holder, for the speech he has made. The Bill of Rights contains unmodified principles. The declarations it contains are our lights and guides, but when we come to apply these great principles, we must modify them for use; we must set limitations to their operation, and the enquiry then is, *quousque*? How far? It is a question not of principle, but of degree. The very moment this immaculate principle of their's is touched, it becomes what all principles are, materials in the hands of men of sense, to be applied to the welfare of the Commonwealth. It is not an incantation. It is no Talisman. It is not witchcraft. It is not a torpedo to benumb us. If the naked principle of numbers only is to be followed, the requisites for the Statesman fall far below what the gentleman from Spottsylvania rated them at. He needs not the four rules of arithmetic. No, Sir, a negro boy with a knife and a tally-stick, is a Statesman complete in this school. Sir, I do not scoff, jeer or flout, (I use, I think, the very words of the gentleman from Augusta; two of them certainly were employed by him,) at the principles of the Bill of Rights, and so help me Heaven, I have not heard of any who did. But I hold with one of the greatest masters of political philosophy, that "no rational man ever did govern himself by abstractions and universals." I do not put abstract ideas wholly out of any question, because I know well that under that name I should dismiss principles; and that without the guide and light of sound, well understood principles, all reasonings in politics, as every thing else, would be only a confused jumble of particular facts and details, without the means of drawing out any sort of theoretical or practical conclusion.

"A Statesman differs from a Professor in an University. The latter has only the general view of society; the former, the Statesman, has a number of circumstances to combine with those general ideas, and to take into his consideration. Circumstances are infinite, are infinitely combined, are variable and transient: he who does not take them into consideration, is not erroneous, but stark mad—*dat operam ut cum ratione insanat*—he is metaphysically mad. A Statesman, never losing sight of principles, is to be guided by circumstances, and judging contrary to the exigencies of the moment, he may ruin his country forever."

Yes, Sir—and after that ruin has been effected, what a poor consolation is derived from being told, "I had not thought it." *Stulti est dixisse non putaram.* "Who would have thought it? Lord bless me! I never thought of such a thing, or I never would have voted for a Convention."

If there is any country on earth where circumstances have a more important bearing than in another, it is here, in Virginia. Nearly half the population are in bondage—yes, Sir, more than half in the country below the Ridge: And is this no circumstance? Yet, let me say with the gentleman from Accomac, (Mr. Joynes,) whose irresistible array of figures set all figures of speech at defiance, that if there were not a negro in Virginia, I would still contend for the principle in the amendment. And why? Because I will put it in the power of no man or set of men who ever lived, or who ever shall live, to tax me without my consent. It is wholly immaterial whether this is done without my having any representation at all, or, as it was done in the case of the Tariff Law, by a phalanx stern and inexorable, who being the majority, and having the power, prescribe to me the law that I shall obey. Sir, what was it to all the Southern interest, that we came within two votes of defeating that iniquitous measure? Do not our adversaries, (for adversaries they are,) know that they have the power? and that we must submit? Yes, Sir. This whole slave-holding country, the whole of it, from the Potomac to Mexico, was placed under the ban and anathema of a majority of two. And will you introduce such a principle into your own State Government? Sir, at some times during this debate, I doubted if I were in my right mind. From the beginning of time till now, there is no case to be found of a rational and moral people subverting a Constitution under which they had lived for half a century—aye, for two centuries, by a majority of *one*. When revolutions have happened in other countries, it was the effect of a political storm, a Levanter, a tornado, to which all opposition was fruitless. But did any body ever hear of a revolution affecting the entire condition of one half of a great State, being effected by a majority of *one*? Sir, to change your Constitution by such a majority, is nothing more than to sound the tocsin for a civil war. It may be at first, a war of words, a weaponless war, but it is one of those cases in which, as the lawyers tell us, fury supplies arms. Sir, this thing cannot be: it must not be. I was about to say, it *shall* not be. I tell gentlemen now, with the most perfect deliberation and calmness, that we cannot submit to this outrage on our rights. It surpasses that measure of submission and forbearance, which is due from every member of an organized Government, to that Government. And why do I so tell them? Sir, we are not a company of naked savages on the coast of New Holland, or Van Diemens Land—we have a Government; we have rights; and do you think that we shall tamely submit, and let you deprive us of our vested rights, and reduce us to bondage? Yes, vested rights! that we shall let you impose on us a yoke hardly lighter than that of the villeins regardant of the manor? We are now little better than the trustees of slave-labour for the nabobs of the East, and of the North, (if there be any such persons in our country,) and to the speculators of the West. They regulate our labour. Are we to have *two* masters? When every vein has been sluiced—when our whole system presents nothing but one pitiful enchymosis—are we to be patted and tapped to find yet another vein to breathe, not for the Federal Government, but for our own? Why, Sir, the richest man in Virginia, be that man who he may, would make a good bargain to make you a present of his estate, provided you give him bond upon that estate, allowing him to tax it as he pleases, and to spend the money as he pleases. It is of the very essence of property, that none shall tax it but the owner himself, or one who has a common feeling and interest with him. It does not require a plain planter to tell an Assembly like this, more than half of whose members are gentlemen of the law, that no man may set his foot on your land, without your permission, but as a trespasser, and that he renders himself liable to an action for damages. This is of the very essence of property. But he says, "thank you, for nothing—with all my heart, I don't mean to set my foot on your land; but, not owning one foot of land myself, I will stand here, in the highway, which is as free to me as it is to you, and I will tax your land, not to your heart's content, but to *mine*, and spend the proceeds as I please. I cannot enter upon it myself, but I will send the Sheriff of the county, and he shall enter upon it, and do what I cannot do in my own person." Sir, is

this to be endured? It is not to be endured. And unless I am ignorant of the character and the feelings, and of what is dearer to me than all, of the prejudices of the people of the lower country, it will not be endured. You may as well adjourn *sine die*. We are too old birds to be taken with chaff, or else we are not old enough, I don't know which. We will not give up this question for the certainty, and far less for the hope, that the evil will be rectified in the other branch of the Legislature. We know, every body knows, that it is impossible. Why, Sir, the British House of Peers, which contains four hundred members, holding a vast property, much more now, it is true, than when Chatham said, they were but as a drop in the ocean, compared with the wealth of the Commons: If they, holding their seats for life, and receiving and transmitting them by hereditary descent, have never been able to resist the House of Commons, in any measure on which that House chose to insist, do you believe that twenty-four gentlemen up-stairs, can resist one hundred and twenty below? especially when the one hundred and twenty represent their own districts, and are to go home with them to their common constituents? Sir, the case has never yet happened, I believe, when a Senator has been able to resist the united delegation from his district in the lower House.

Mr. Chairman, I am a practical man. I go for solid security, and I never will, knowingly, take any other. But, if the security on which I have relied, is insufficient, and my property is in danger, it is better that I should know it in time, and I may prepare to meet the consequences, while it is yet called to-day, than to rest on a security that is fallacious and deceptive. Sir, I would not give a button for your mixed basis in the Senate. Give up this question, and I have nothing more to lose. This is the entering wedge, and every thing else must follow. We are told, indeed, that we must rely on a restriction of the Right of Suffrage; but, gentlemen, know, that after you shall have adopted the report of the Select Committee, you can place no restriction upon it. When this principle is in operation, the waters are out. It is as if you would ask an industrious and sagacious Hollander,* that you may cut his dykes, provided you make your cut only of a certain width. A rat hole will let in the ocean. Sir, there is an end to the security of all property in the Commonwealth, and he will be unwise, who shall not abandon the ship to the underwriters. It is the first time in my life, that I ever heard of a Government, which was to divorce property from power. Yet, this is seriously and soberly proposed to us. Sir, I know it is practicable, but it can be done only by a violent divulsion, as in France—but the moment you have separated the two, that very moment property will go in search of power, and power in search of property. "Male and female created he them;" and the two sexes do not more certainly, nor by a more unerring law, gravitate to each other, than power and property. You can only cause them to change hands. I could almost wish, indeed, for the accommodation of the gentleman from Augusta, that God had ordained it otherwise; but so it is, and so it is obliged to be. It is of the nature of man. Man always has been in society—we always find him in possession of property, and with a certain appetite for it, which leads him to seek it, if not *per fas*, sometimes *per nefas*; and hence the need of laws to protect it, and to punish its invaders.

But, I am subjecting myself, I know, to a most serious reproach. It will be said that I am not a friend to the poor. Sir, the gentleman from Chesterfield and the gentleman from Spottsylvania, have dealt with the "friends of the people" to my entire satisfaction. I wish to say a word as to the "friends of the poor." Whenever I see a man, especially a rich man, endeavoring to rise and to acquire consequence in society, by standing out as the especial champion of the poor, I am always reminded of an old acquaintance of mine, one Signor Manuel Ordenez, who made a comfortable living, and amassed an opulent fortune by administering the funds of the poor. Among the strange notions which have been broached since I have been on the political theatre, there is one which has lately seized the minds of men, that all things must be done for them by the Government, and that they are to do nothing for themselves: The Government is not only to attend to the great concerns which are its province, but it must step in and ease individuals of their natural and moral obligations. A more pernicious notion cannot prevail. Look at that ragged fellow staggering from the whiskey shop, and see that slattern who has gone there to reclaim him; where are their children? Running about, ragged, idle, ignorant, fit candidates for the penitentiary. Why is all this so? Ask the man and he will tell you, "Oh, the Government has undertaken to educate our children for us. It has given us a premium for idleness, and I now spend in liquor, what I should otherwise be obliged to save to pay for their schooling. My neighbor there, that is so hard at work in his field yonder with his son, can't spare that boy to attend, except in the winter months, the school which he is taxed to support for mine. He has to scuffle hard to make both ends meet at the end of the year, and keep the wolf from the door. His children

*Looking to the Chevalier Huygens, the Dutch Minister, who was in the Hall.

can't go to this school, yet he has to pay a part of the tax to maintain it." Sir, is it like friends of the poor to absolve them from what Nature, what God himself has made their first and most sacred duty? For the education of their children is the first and most obvious duty of every parent, and one which the worthless alone are ever known wholly to neglect.

Mr. Chairman, these will be deemed, I fear, unconnected thoughts; but they have been the aliment of my mind for years. Rumination and digestion can do no more; they are thoroughly concocted.

In the course of not a short or uneventful life, I have had correspondence with various persons in all parts of the Union, and I have seen gentlemen on their return from the North and the East, as well as from the new States of the West; and I never heard from any of them, but one expression of opinion as it related to us in Virginia. It was in the sentiment, if not in the language of Virgil; Oh, fortunate, if we knew our own blessedness. They advise us with one voice, "Stick to what you have got; stick to your Constitution; stick to your Right of Suffrage. Don't give up your freehold representation. We have seen enough of the opposite system, and too much." I have received and seen letters breathing this spirit from men who dare not promulgate such a sentiment at home, because it would only destroy their hopes of usefulness—from North Carolina, from South Carolina, from Georgia, from Alabama, from Pennsylvania and from New York.

Sir, the day, come when it may, which sees this old and venerable fabric of ours scattered in ruins, and the mattock and the spade digging the foundation for a new political edifice, will be a day of jubilee to all those who have been, and who must be in conflict with those principles which have given to Virginia her weight and consequence, both at home and abroad. If I understand aright the plans which are in agitation, I had sooner the day should arrive, that must close my eyes forever, than witness their accomplishment. Yes, Sir, to this Constitution we owe all that we have preserved, (much I know is lost and of great value,) but all that we have preserved from the wreck of our political fortunes. This is the mother which has reared all our great men. Well may she be called *magna mater virum*. She has, indeed, produced men, and mighty men.

But, I am told, that so far is this from being true, we have been living for fifty-four years under a Government which has no manner of authority, and is a mere usurpation at best. Yet, Sir, during that time, we have changed our Government; and I call the attention of this body to the manner in which that change was made. The Constitution of '88 was submitted to the people, and a Convention was called to ratify it, and what was that Convention? It was the old House of Burgesses with a nickname—the old House of Delegates, Sir, with a nickname—in which the same municipal divisions of the State were regarded—the same qualifications required—the same qualified freeholders were returned from the same districts and by the same sheriffs—and yet, by the waving of a magic wand, they were converted into a Convention—in which Warwick was made equal with Culpeper, then by far the largest county in the State. Do not gentlemen see where the point of their own argument leads to? If it is a *sine qua non* of a legitimate Government, that it must have the assent of a majority of the people told by the head, then is the Federal Government an usurpation—to which the people *per capita*—King Numbers—has never given his assent.

It is now thought necessary to have another Convention, and what is it? It is nothing but the Senate of Virginia, elected from the same districts, by the same voters, and returned by the same sheriffs; many of them the self-same men; yet when multiplied by four, by talismanic touch, they become a Convention. Yes, Sir. You can't trust the House of Delegates and Senate with your affairs, but you can trust a smaller body. You can't trust the whole, but you can trust a part. You can't trust the Senate, but you can trust the same men, from the same districts, if multiplied by four. Sir, are we men? Or, are we children? For my share, this is the first Convention in which I ever had a seat; and I trust in God, it will be the last. I never had any taste for Conventions; or for new Constitutions, made per order, or kept ready made, to suit casual customers. I need not tell *you*, Sir, that I was not a member of the Staunton Convention. No, Sir, nor was I a member of the Harrisburg Convention—nor the Charlottesville Convention. No, Sir, nor the Anti-Jackson Convention—though I had the honor, in very good company, of being put to the ban and anathema of that august Assembly—and when, to their very great surprise and alarm, we returned their fire—their scattered like a flock of wild geese.

Mr. Chairman, the wisest thing this body could do, would be to return to the people from whom they came, *re infecta*. I am very willing to lend my aid to any very small and moderate reforms, which I can be made to believe that this our ancient Government requires. But, far better would it be that they were never made, and that our Constitution remained unchangeable like that of Lycurgus, than that we should break in upon the main pillars of the edifice.

Sir, I have exhausted myself, and tired you. I am physically unable to recall or to express the few thoughts I brought with me to this Assembly. Sir, that great master of the human heart, who seemed to know it, as well as if he had made it, I mean Shakespeare—when he brings before our eyes an old and feeble monarch, not only deserted, but oppressed by his own pampered and ungrateful offspring, describes him as finding solace and succour, only in his discarded and disinherited child. If this, our venerable parent, must perish, deal the blow who will, it shall never be given by my hand. I will avert it if I can, and if I cannot, in the sincerity of my heart, I declare, I am ready to perish with it. Yet, as the gentleman from Spottsylvania says, I am no candidate for martyrdom. I am too old a man to remove; my associations, my habits, and my property, nail me to the Commonwealth. But, were I a young man, I would, in case this monstrous tyranny shall be imposed upon us, do what a few years ago I should have thought parricidal. I would withdraw from your jurisdiction. I would not live under King Numbers. I would not be his steward—nor make him my task-master. I would obey the principle of self-preservation—a principle we find even in the brute creation, in flying from this mischief.

Gentlemen seem to press the question—let it, for me, be taken. It was only because I felt unwilling to delay the Committee to another week, that I have been induced now to address them under every disadvantage.

It being now past four o'clock,

The question was called for on all sides; it was accordingly taken, after having been distinctly announced from the Chair; and the votes, (as counted by Mr. Fitzhugh and Mr. Loyall.) stood as follows: Ayes 47, Noes 47.

Whereupon, the Chairman giving his casting vote in the negative, the amendment of Mr. Green, proposing that, "in the apportionment of representation in the House of Delegates, regard shall be had to white population *and taxation combined*," was *rejected* in Committee of the Whole.

[N. B. There must have been an error in the count, as the whole Convention, consisting of *ninety-six* members, was present. The true vote, as since ascertained, was 47 Ayes, and 49 Noes.]

Mr. Scott of Fauquier, moved an amendment to the first resolution reported by the Legislative Committee, to insert after the word "exclusively," the words "and in the Senate to taxation exclusively;" to make the whole resolution read:

"*Resolved*, That in the apportionment of representation in the House of Delegates, regard shall be had to white population exclusively; and in the Senate to taxation exclusively."

Mr. Leigh now moved that the Committee rise.

It rose accordingly, and thereupon the House adjourned.

MONDAY, NOVEMBER 16, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong of the Presbyterian Church.

The President laid before the Convention a letter from Elisha Bates, a preacher belonging to the Friends' Society, in the following words:

RICHMOND, 11th Mo. 10th, 1829.

Respected Friend,

James Monroe, President of the Convention:

Elisha Bates, a minister in the Religious Society of Friends, respectfully requests the opportunity of a religious meeting, with the members of the Convention, this evening, at five o'clock.

ELISHA BATES.

On motion of Mr. Dromgoole, the letter was laid upon the table.

Mr. Henderson of Loudoun, presented a memorial from the non-freeholders of that county, on the subject of the extension of the Right of Suffrage, which, on his motion, was referred to the Committee of the Whole.

On motion of Mr. Scott, the House then resolved itself into a Committee of the Whole, Mr. Powell in the Chair; and the question being on the amendment offered yesterday by Mr. Scott, which proposed to add to the first resolution reported by the Legislative Committee, the words "and in the Senate to taxation exclusively"—so as to make it read:

"*Resolved*, That in the apportionment of representation in the House of Delegates, regard shall be had to *white population exclusively*, and in the Senate to *taxation exclusively*."

Mr. Scott asked and obtained leave to withdraw his amendment.

And the question recurring on the original resolution,

Mr. Leigh of Chesterfield moved to amend it, by striking out all after the words "Resolved that," and inserting in lieu thereof, as follows:

— "representation (in the House of Delegates) be apportioned among the several counties, cities and towns of the Commonwealth, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

In supporting the amendment, Mr. Leigh observed, that it had already been explained to the Committee, that the general result of the scheme he proposed, when applied to the present circumstances of the Commonwealth, would be, substantially, the same as that derived from the adoption of the plan of the compound basis, which had been rejected by the Committee. My motive, said Mr. L. in presenting this amendment, is to try the sense of the Committee in reference to the adoption of the *Federal number*, as the basis of representation. The proposition varies in one particular from that of my friend from Culpeper, (Mr. Green.) In the debate on his amendment, it was suggested, by way of objection, that the plan of a mixed basis put it in the power of the delegation from the Eastern part of the State, by avoiding to tax the Western districts, to keep the weight of power constantly in the East; and that such was the desire of the inhabitants of that part of the State to retain the power in their own hands, (manifested, as was said, by their general opposition to the call of this Convention,) that we might expect, in future, a majority of the Legislature to be anxious to lay the heavier burdens on the East, and the lighter on the West. This was urged as an objection, not so much against the principle of the scheme, as one likely to operate in its practical details. And I am not sure but that some, perhaps several, voted not against the *principle* of the mixed basis, but against the inconvenience and abuse of power that might grow out of the *application* of the principle. Without entering into that argument, I shall be content to substitute for the mixed basis, against which this objection is thought to be, a basis on the Federal number. I am satisfied it is a wise provision in the Federal Constitution, and that here, its results will be as beneficial as those of any other scheme: and it is recommended to my mind by the facility and certainty with which it can be applied in practice. The plan has long been in operation amongst us; we are acquainted with its effect; and I earnestly hope that it may be adopted by the Committee.

Mr. NICHOLAS rose in support of the amendment.

Ever since I have taken my seat, said he, in this Convention, I have felt a very awful sense of my personal responsibility. I have felt it, not only as one representing a portion of the Commonwealth, and therefore, in reference to the whole State, but in a peculiar manner, with regard to the particular district I have the honor in part to represent. The change now contemplated in our institutions, is radical in its nature. We are called upon to change the *whole* system of our civil polity: and give me leave to say, that, superadded to my responsibility as a citizen of the Commonwealth, at present, I am called to decide a question which must affect the peace and happiness of our remotest posterity. Besides, Sir, I am the representative of one of those districts which must suffer most, should the change be adopted. On the issue of our present proceeding, will, in a great measure, depend the future peace and tranquillity of the State: and though I have not the vanity to believe that I can bring to the Committee any thing worthy of them, and should greatly have preferred to listen to the wisdom of others, than to present my own crude remarks, still, had it not been for the feeble state of my health, for many days past, I should have held it to be my duty to make at least a feeble effort in behalf of those, who have honored me with a seat on this floor.

Sir, we have arrived at an awful period in our deliberations. It was predicted by my honorable friend from Charlotte, (Mr. Randolph,) whose solemn appeal, so recently addressed to us, left a deep impression on my mind, that the rejection of the amendment would be effected by a majority of one, or at most, of two votes. The fact has justified that prediction; and, Mr. Chairman, I cannot conceive a more awful state of any country, than that it should be about to change its fundamental law, by such a majority: to change its entire Constitution, when *one half* of the country vote against the change. So meagre a majority, made up, not of Delegates coming from beyond the Blue Ridge, but, in part, by the addition of members from this side the mountain, members on whom we fondly counted, as being our natural allies, (I cast no censure on their conduct, I know that they act conscientiously, and I presume that they speak the wishes of their constituents;) I say, so meagre a majority plainly shows what is the sense of the country, as to a change in its Constitution. And can it be wise to effect so radical a change, when half the country pronounces it to be unwise? When they loudly declare that the change will subvert the rights, prostrate the interests, and destroy the happiness of one half the State? What must be our

situation, if we adopt such a measure? Can we ever be a happy and tranquil community, while one-half its members conscientiously believe, that the change we shall have made, has not only injured their interests, but destroyed all prospect of quiet and happiness? Surely we all must know, that no country ever can prosper under such circumstances. The best, the only effectual support of any Government, is in the confidence of the people; but when the people believe themselves oppressed by the Government, what prospect can there be of their yielding it a cordial and enduring support? What can we look forward to, but eternal jealousies and animosities? Can any wise man, however wedded he may be to his own theories, can any good man, wish to see the Commonwealth in such a situation?

Mr. Chairman, I am one of those who believed it unwise to call this Convention. I do not say, and never did say, that our Government is perfect theoretically; that it is absolutely free from all defects. But every wise Statesman, in judging of a system of Government, will look to *the whole* of that system. He will form his estimate of all the good it contains, and then he will determine whether that amount of practical good does not overbalance any merely theoretical objections. It was on this ground, that I was opposed to the call of a Convention. This business of theoretical perfection, may have an inviting appearance; but all experience proves, that absolute perfection is unattainable—a mere *ignis fatuus*—that must lead to disappointment, and, ultimately, to misery, and public convulsions. Lycurgus and Solon, were supposed to be among the wisest men of their day, and they established Governments on what they thought a system of absolute perfection; but what has become of them? Where are all the ancient Republics? They are gone, and in their room has come the most frightful despotism. Wisdom surely dictates, that when we have enjoyed a practical good more than half a century, we should not give it up for what theorists may recommend to us. The Government of Solon did not last even during his life; the liberties of his people were usurped by Pisistratus during his own life-time.

It has been said, that the object of some gentlemen, who have attended this body, is merely to prevent any thing from being done. That is not my case. I did oppose the calling of the Convention; but when the people said that it should be assembled, I came here with the honest intention to stick to what was good in the Constitution, and this I mean to do as long as possible. The gentleman from Charlotte, (Mr. Randolph) laid down a rule which, I think, was full of practical wisdom. He asked, whether we will reform our Government, on mere theory? And he said, (and so I say,) “no: but let us first see some practical evil; and when it is clearly proved, then let us reform our Government in that particular respect and in that only.” I have once been an officer under the Government for twenty years—I was Attorney General of the State at an early period of my life, (and if I ever did, I certainly did not then deserve the trust;) but the situation afforded me a good opportunity to judge, from observation, of the practical effect of this Government. And I declare to God, that in the whole period of those twenty years, I knew of no instance of oppression, or injury to any man's rights caused by the operation of the Government. It is not then wonderful that I should part from it with reluctance.

Permit me now to make a few observations, on the amendment offered by the gentleman from Chesterfield.

I was always of opinion, that the true ground of representation was that of the Federal number. I voted in favour of the mixed basis, because it appeared to me that it might have the effect of securing the rights of the Eastern portion of the Commonwealth; and not because I preferred it. The other mode had my decided preference. The Federal number was adopted from considerations which operate in what is now before this body. It was not adopted on grounds of compromise. Look at the speeches of that day: look at the number of the Federalist on that subject: it was fixed upon not as a compromise, but as being in itself the correct basis of representation. Here we have both property and persons protected: and here, we find, the happy medium between the two extremes of universal suffrage and aristocratic Government.

It was the ground taken by gentlemen from the North (all of them strongly prejudiced against slavery,) as a ground which afforded a just protection to property. The principle was viewed not only as vital to the Southern States, but as a fair principle for all. Any gentleman who will look at the debates of the Federal Convention, will find full evidence that it was not a compromise. The United States' Government, though in many features of it, it is Federal, is, in others a *National* Government. Representation is one of those features. In its representation, it is National, and not Federal. Its representation is not founded upon concessions of one State to another State, but is laid as a correct basis for the whole. The mixed basis, as proposed by the gentleman from Culpeper, must necessarily be fluctuating and very hard to reduce to practice. The taxes will often differ in the same district. The whole basis must be eternally fluctuating, and will require to be re-adjusted from time to time. But the ratio of three-fifths of the slaves furnishes a certain criterion, that is easily

measured, and cannot change. Gentlemen represent this proposition as unjust, and fit for one portion of the Commonwealth only; but this is not true. We do not say that the Eastern part of the State only shall have the three-fifths added, but that all the Commonwealth shall; wherever there are slaves, there the principle will take effect; and if, as has been very ingeniously represented, it be, indeed, probable, that the slaves will go beyond the mountain the moment they do so, the West gets the power. Indeed, this argument of theirs, appeared to me at the time, to be *felo de se*, or else, to be in opposition to the other arguments adduced by them in favour of a white basis. If the slaves shall emigrate, every five slaves that pass over the mountain, give them additional representation. The rule is general, and operates alike on all.

I said, we had arrived at an awful period in our deliberations. Yes, Sir, we have reached the brink of a precipice. Gentlemen must here decide for themselves; and I put it to gentlemen of the West, whether they will consent to form an entirely new Constitution for the State by a majority of one, or of two, or of five, or ten? It is an awful responsibility for them; and all the ills which may grow out of it, be on their heads! I say this, not in anger, but in sorrow. Some of my dearest friends and nearest relatives, reside beyond the Blue Ridge. I deprecate the calamity which I behold impending, for their sakes, as much as my own.

Much has been said as to the moral influence of Virginia. I believe, she has frequently saved the Union; and though gentlemen are pleased to say, that she is retrograding in wealth and influence, we have this proud consolation, that if we *have* refused the lures and boons of the General Government, we are at least poor on principle. Virginia may be a victim to her honour, but I, for one, hope she may be poor forever, if she can only become rich at the sacrifice of her principles.

Gentlemen are under a great mistake, if they impute to me any wish for confusion, or any desire that we may make a change that shall prove unpalatable to the people. But, we, whose districts are to be sacrificed, have an important duty which we owe to our constituents. I am disposed to conciliate. I wish the State to remain united. I had rather be the citizen of a great Commonwealth than a petty State. But, there is something yet better than union. Oppression is worse than division. I am ready to go as far for conciliation as any, but I am not ready to offer up my country as the sacrifice. I think it vastly better, that freedom should be preserved, even if disunion must be the price. I speak, God knows, with affliction at my heart. But, how is this evil to be averted? Here we are arrayed against each other. The West advances its demands, and they say, "there are provisions which we must have." The East remonstrates, and says, "you will destroy us." To every compromise there must be two parties; but do we hear one whisper, aye, so much as one low voice, that talks of compromise? No. Gentlemen stand on their rights: they stand perfectly stationary: they call to us to come up to them: but that we never can. I am willing to adjust the difference. Do gentlemen ask how? By a plan which shall give security to the East, for the preservation of all that is dear to them and their posterity. While we shape our course towards conciliation, we must have effectual security. All security from equality of taxation, is purely imaginary. What boots it to us, that the taxes are made equal, if they are all to be paid by one part of the State? It would be the interest of the West, to pay even a heavy taxation, if they are to have the sole distribution of the money raised. The only possible security, is to give us such a share in the administration of affairs, as shall ensure a good and just Government; as will secure to us the rights which we believe to be in jeopardy.

Let me say, in conclusion, that whatever vote I may give in the final issue, I reserve to myself the right, first to see *the whole* extent of the security gentlemen propose to give: and, then, when they have modified their proposition into its last form, then comes the awful question, is this security adequate? If I shall judge that it is not, I never will give my assent to any system which will jeopardize the rights of my constituents.

MR. MONROE, now rose and addressed the Committee, in substance, as follows:

Mr. Chairman: The House, I hope, will indulge me in a few remarks. I will propose to be very concise. My faculties of debate, always humble, have been impaired by long disuse while I occupied another station in the public service, and have, of late years, been yet farther weakened by bodily infirmity; yet duty impels me to make some remarks on this occasion. They shall be but few, and more a sentiment than an oration. My situation is one of peculiar delicacy as it relates to my constituents, and my country. When I retired from the office I last held, it was with the expectation that that retirement would be permanent. My age admonished me that it was welcome and becoming. When I received an invitation to come here, (for the seat I hold was not sought by me,) I consented with regret, for causes which must be obvious to all. Yet I would not shrink from the call of my fellow-citizens, and at their call I came. But it was with the disposition to look to the whole Common-

wealth: from the Potomac to the Roanoke, from the mountains to the ocean, from Kanawha, to Monongalia, from the Blue Ridge to the Ohio; all was one to me.

I could have been content to reside in any part of the Commonwealth. I left one part of it, where I had spent the greater part of my life, for another, where I was almost unknown. Its citizens kindly manifested their confidence, and I came with a disposition to look to the interests of the whole. I consider myself as their servant, and I consider them, as having a right to instruct me. If they should think fit to do so, I shall either obey them or withdraw from this Assembly. When I find myself in that dilemma, I shall do so without a word. But I do not know that it will arrive. In the course I shall pursue here, I shall make it my principle to look to the State at large. I shall look also, to the divisions and to the state of acrimonious feeling which existed, long before the calling of this Convention, and which I consider this body as having a tendency to tranquilize.

My idea has been, that it will be wise to base representation on the white population in the House of Delegates, and to place an adequate check on the result of their deliberations in the Senate. This is my opinion. By basing the representation on the white population, we are resting on principle; on a principle corresponding with the Bill of Rights and with the Constitution; for, our Government is in the hands of the white people. We shall by this means rest on fundamental principles, and gratify the feelings of the people, in every part of the community. Our Constitution rests on that basis.

And by whom was it framed? By the most enlightened of our citizens; by men who have given proof of their patriotism, wisdom, and knowledge of mankind. I wish to preserve its important features and to alter it as little as may be, considering that it was the first of our Constitutions ever made here, and will be an example through all ages. Where do we find a free Government in history, except in Greece, to a certain degree in Carthage, and in Rome? Every where else we find only barbarism, and all mankind kept in a state of degradation. With this example before them, these men framed a Constitution better than had ever existed before.

By resting representation on the white population, in the House of Delegates, we leave that body free from any check: but to control its hasty decision, you resort to the Senate, and therefore I thought that the plan of the mixed basis, ought to be confined to the Senate. For my part, I am ready to vote for it. But I think the Federal number liable to fewer objections. It makes our system correspond to that of the Federal Government. It is more easy of execution, and it is not against principle.

By adopting the white basis in the House of Delegates, we shall tranquilize the people, and if we adopt the mixed basis in the Senate, I hope that the other gentlemen will meet us there.

I hope, Sir, that this will be done. Why do men enter into society? What are their objects, whether rude or civilized? Is it not for the protection of life, liberty and property? Is not this the declaration of our Constitution and of all the Constitutions since adopted throughout the United States? Is there any other motive for society, whether rude or civilized? In a rude state, the protection of life is the principal motive, but even there, property also is a motive. What kind of Government do we find prevailing among our native Indians? They are not governed by written compacts, but the principal chief or elder as he is called by them, rules over the tribe, and they submit; he following the will of the tribe.

Look at civilized society: is the obligation to submission not stronger? Can you separate property from either state? There is a difference, however. In the rude state of society there is the game—all is open and free to all—and property exists only round their cabins. But, what is the case with civilized man? There man presses on man—society presses on society: each individual must have something of his own or he starves. There the people are the guardians, and they must protect property, as well as life and liberty, or society perishes.

This protection is in no degree incompatible with the adoption of the white basis of representation in the House of Delegates; and I hope that this body will unite in some plan that may correspond to the general views of the community, and may correspond with our relations to the General Government, for which I have a very high respect. But, I know the duty of a representative to his constituents, and, I hope, we shall all draw to that end—we shall gain a grand object—and it may lead to what we cannot tell. I would, myself, rather have a representation that may correspond to the Federal number.

It has been suggested, that it will be best to keep the qualification of voters as it exists at present, or to reduce it but in a small degree. I differ from that opinion. I think we must modify and reduce it. Who are they who are pressing for a new Constitution? Those, who suppose themselves deprived of their just Right of Suffrage. Reduce the requisites for this, and you carry tranquillity into the body of the community. Our situation in reference to this subject, is different from that of any people who ever existed before us. What was the condition of the ancient republics? In

Greece, Carthage, and Rome? The question there was, whether power should be held by the people *en masse*? Whether it should be exercised by the people in a body? Their Governments originated with a prince or with the nobles. They had always great weight; and the contest was between the rich and the poor. The people originated no measure—they heard what was proposed by the prince, but they proposed nothing. In Athens they had what has been called a free Senate—and as to Lacedæmon it was the same—the same thing applies to Rome, and in a degree to Carthage; but they only adopted or rejected what was submitted to them. The people had no stake in the property of the State, it was all in the hands of the prince or the ancient nobility.

But our Government is in the hands of the people. We have no privileged orders. We have no overgrown wealthy to oppress the poor—and they cannot do it if we fix the grade of representation on a moderate scale. The President of the United States, the Governor of the State, the Senators, all are servants of the people. The property of the country rests on the people alone. Therefore, I say, our situation is different from that of all who ever existed before us.

I would adopt a plan that may harmonize the feelings of the community on the subject of Suffrage, and of representation in the popular branch. I would place a check in the other branch.

I thought it my duty, though in a feeble manner, to explain these views to the House—and I wish, also, that my sentiments should go to my constituents.

MR. TAZEWELL said, that when he came to the House this morning, he had but little expectation, and certainly not the slightest inclination, to take any part in this debate. He had not felt any wish to participate in the discussion of a question so general and undefined in its terms, as that which the Committee would soon be called upon to decide. All which he had ever seen of man, and all the information which he had ever been able to acquire in the science of politics, combined to teach him, that no good ever had, and that no possible good ever could, result from the discussion of any mere general propositions, in order to elicit by such discussion an agreed basis, which, by mutual consent, might be adopted, as a foundation for some *unknown* practical, political scheme. All such schemes, when fully developed (and developed they must be at some time or other,) must at last be brought to the test of experience and utility; and as it ought not to be considered as constituting any just objection to any useful political plan, that it was not constructed according to the most nice and precise rules of any art, so nor will it be any recommendation of any other plan, that it is a clear syllogistic deduction from any supposed general truth. If the details of any intended scheme, when fairly exhibited, should be seen to be mischievous, they would surely be rejected, although in strict accordance with the agreed basis; and if believed to be good, they would infallibly be adopted, although at war with, and contrary to, all the admitted general truths announced by such basis. Discuss whatever general proposition you please, settle whatever general basis you choose, and you will at last discover, when you come to fix the details of the plan, that each of these must be adjusted by a regard to its own particular merits, and by no special reference to any general rules. Entertaining these opinions, it was with much regret he had seen at first, the course and direction intended to be given to the deliberations of the Convention; and he had then almost resolved, to say not one word in relation to the matter now under consideration, until it should assume a more certain and defined form than it yet presents. But the discussion had now proceeded so far, that it would perhaps be an economy of time, to extend it a little farther; and by endeavoring to show, not the truth or falsehood, but the tendency and effect of the general proposition, so as to bring our future, if not our present labors, to a more speedy termination, than they seem at present likely to reach. It was with this view he would ask the attention of the Committee to a few remarks which he proposed to address to them, in the course of which, he would notice some of those they had just heard from the venerable gentleman from Loudoun, who had but just now taken his seat.

Whatever may be the form of the question now presented to us, the general proposition included in it is; what is the proper basis whereon to erect representation in the Legislative Department of a Government designed for such a State as is Virginia? In examining this question, a most apt enquiry at once presents itself to our consideration. Upon what basis is such representation founded now? When the venerable member from Loudoun, and other much respected gentlemen on every side of this body, unite in telling us, that the existing Constitution of Virginia is the best the world has ever seen—when the experience of many here assure us, that this Government has endured for more than half a century, producing as much of good as could be expected to result from any Government—and when not a solitary witness has appeared to testify to the existence of a single mischief as its effect—we surely ought to examine carefully the foundation of such a Government, before we should wish to change it. For his part, he was free to declare, that he would not compare

the knowledge derived from such experience, with that obtained by an examination of the visions of Plato or Aristotle, the theories of Locke or Sidney, or of any other mere speculative scheme whatever.

The basis of representation here, was established more than two centuries since. It rests not upon a prescription of fifty odd years only, as his friend from Charlotte had supposed, but it traces back its origin to a period much beyond the independence of the Commonwealth, and is coeval with the very first Legislative Assembly that ever convened in Virginia. During the long interval that has since elapsed, representation itself has undergone many changes, but the foundation wherein it rests, has ever remained the same. He prayed the Committee, therefore, to accompany him in the enquiry he was about to institute, as to the basis whereon this ancient scheme of representation was erected.

In the year 1619 or 1620, the first House of Burgesses assembled at Jamestown. The members of that body were elected by the different plantations as they were then called, or as we should now denominate them, the different settlements, then existing in the Colony. The early settlers had established themselves in different societies, along the margin of James River, from its mouth to near this spot.

These societies, separated either by wide water courses, difficult to be passed, or by thick forests dangerous to penetrate, differed widely from each other, in the numbers of their population, in their wealth, and in the extent of the territory occupied by them: but each was entitled to representation, and each sent its Burgess to the Grand Assembly. Various circumstances, while each had a common interest in the prosperity of all, each had also a particular interest peculiar to itself. With a view of enabling each to promote the good of all, in that mode which would be most suitable to its own convenience; and with a view of enabling all to advance the prosperity of each, by any means not inconsistent with the common good, representation was allowed to every society then existing; and this, without having regard to the population, or the wealth of any, or even to these things combined, but merely to the peculiar interests existing in the different societies, occupying the undefined space, then termed a plantation or settlement. The basis of representation, then, was the interests of the different plantations; and as these interests were various and peculiar, each interest had its proper representative, whether that interest concerned many or few persons, or involved much or little wealth. If the peculiar interest of the part, was of sufficient importance to claim the regard of the whole, that interest was entitled to, and was allowed a representative, whether the population of the plantation amounted to fifty or to five hundred persons, or whether their wealth was £100 or £1,000.

In process of time, the different settlements became extended in every direction, and were so brought in contact with each other. The various interests then existing in the Colony, became more assimilated and consolidated than they had been before; but still a diversity of particular interests existed. The wants and wishes of the settlers near Accomack, must have been very different from those of the persons dwelling near the Falls of James River, and the pursuits and situation of the inhabitants at Point Comfort, must have been very unlike those of persons abiding far from them, on the other side of the great water. This union of the settlements, had superseded the necessity of allowing representation to each of what had been the different plantations; but the reason for allowing representation to the various interests existing in the Colony, still remained as before. The abode of these different interests, had, indeed, been much enlarged and extended; but the interests themselves, remained still various. In this state of things, public convenience required a new division of the settled parts of the Colony; and accordingly, in 1634, it was divided, for the first time, into eight shires or counties, as they were afterwards called. These shires, our history and laws inform us, were very different in extent of territory, in the numbers of their respective inhabitants, and in the taxable property possessed by these inhabitants: but still the same basis of representation was preserved. Within each of these shires, a particular interest, peculiar to itself, was supposed to exist; and to that peculiar interest, representation was allowed, whatever might be its comparative numbers, or wealth, or extent of territory.

Pursuing the examination further, you will find, that as the frontier counties extended into the wilderness, new interests sprung up in each. The pioneers and advanced guards of the society, must have had very many wants, and wishes, and necessities, different from their former associates in the same county. The advance of the one, in exposing them to new perils and difficulties, gave peace and security to those they left behind; and the peculiar interests of the frontier inhabitants of Northampton, and York, and Isle of Wight, and Henrico, must have been very different from those of their brethren in the other parts of these counties, resting, as the latter did, upon the interior shires. Thus, it came to pass, that within the same county, where at first, a single interest only existed, two different interests arose. If both these interests were to be represented by those chosen by a majority of the two, it was very

certain, that one of these two would be neglected; and hence arose the necessity for dividing the frontier counties, by such lines, as might allow to each interest, its proper representation. In this manner, we went on regularly dividing the frontier counties, as new interests sprung up in each, until the whole territory of Virginia was thus distributed.

Nor did this process of allowing representation to every peculiar interest in the community stop here. Whenever an interior county became so populous, or its territory was found so wide spread, as to justify a belief, either that different interests had or might arise within it, such county was always divided, whensoever a division of it was asked for—nay, in many cases where neither the extent of territory, nor the number of inhabitants was so great, as to render it probable that different interests would arise, yet if the county was found intersected by wide water-courses, or rapid torrents, or rugged mountains, or if any other cause existed, calculated to interpose permanent obstacles in the way of free and frequent intercourse between the inhabitants of different parts of the same county, it was always divided upon the application of either part, where particular convenience, (which must always be considered as its peculiar interest,) required such a division.

Nor is this all. Our history will further inform us, that after the first division of the State into shires or counties, peculiar interests arose within the bodies of some of these counties, which interests were not of a character to justify or to require the dismemberment of the county, in order to provide special representation of them. When such interests appeared, they were, therefore, incorporated, and by their several charters of incorporation, were allowed a representation different from that which had always been given to the peculiar interests existing in the counties themselves—such, most probably, was the origin of the representation allowed to Jamestown, and afterwards to that which was certainly allowed to the city of Williamsburg, to the borough of Norfolk, and to the College of William and Mary. Neither the comparative population nor wealth, or extent of either of these corporations, at the time their several charters were obtained, could possibly have entitled it to representation, if representation had then been erected upon either of these bases. But the interests of navigation, of trade, and of science, which were believed to exist in these corporations, were each important to the community, and being then peculiar to these interests, were respectively allowed a representative, as all other interests had been before.

Such was the basis of representation established in the Colony of Virginia at the moment when a representative Legislature was first introduced here; and upon this basis was every thing of that sort afterwards founded, up to the period of the revolution of 1776. It rested upon the peculiar interests existing in particular districts, the limits of which districts were at first accidental, but were afterwards delineated and marked out by the convenience of the inhabitants within them.

When the Convention who formed the existing Constitution of Virginia assembled, they found representation established on the basis just stated; and being desirous of preserving all of our ancient institutions which they could preserve, consistently with the principles of the new Government they were about to create, they continued to each county and corporation then existing, the same right of representation it then enjoyed. No departure from this rule occurred, except in two cases, and these exceptions prove strongly the existence of the rule itself. Jamestown, the ancient metropolis of the Colony, had become so much reduced in its population, that it was inconceivable that any peculiar interest could abide there; and the College of William and Mary was no longer the peculiar residence of most of the science in Virginia, and, therefore, no longer entitled to representation on that account. Jamestown and the College, were, therefore, deprived of their particular representation, while every thing else was preserved as it had before stood; and the same power was given to the new Legislatures, which had always been exercised by the former, of dividing the existing counties, and of establishing new corporations, whenever, in its opinion, the general interest of the whole community, and the peculiar interest of any part of it, required the exercise of such power.

Such is the basis of representation in Virginia now. This basis was probably just and perfect when first established, and would yet be regarded in the same light, but for a single circumstance, to which none here probably are indisposed to apply the proper corrective. That circumstance is this: In the original distribution of the counties, lines of demarcation were necessarily drawn, within which limits peculiar interests did then abide, although these limits circumscribed in some instances very narrow spaces. The Convention of 1776, acting upon the opinion, that it would be unwise to change any thing then existing, except when such change was necessary to prevent practical mischief, had regard to the existing electoral precincts; and intending to preserve to each precinct, the rights of representation it then had, inserted a provision in their Constitution, that each county should continue to have two representatives. The object was wise and just at the time. But, while they prudently provided for

the probable case of new interests thereafter to spring up in the existing counties, and, therefore, gave to the Assembly the power of dividing counties and of creating corporations at their will, they did not probably foresee, and therefore did not provide for the event, of any county or corporation ceasing to be the abode of some interest peculiar to itself, the existence of which peculiar interest, was the sole cause of giving to such county or corporation, any particular representation at first. In providing for the birth of future peculiar interests, they omitted to provide for the extinction of such as then existed; and while the Legislature, by this Constitution, was authorised to give representation to any new interest, by dividing the counties or creating new corporations within which it might appear, the mandate of the Constitution, that each of the existing counties should have two representatives, deprived the Legislature of the power of taking from such counties, any portion of their rights of representation, even after the cause which originally gave to them such rights, had ceased to exist.

In consequence of this provision in the Constitution, it has occurred, that after some of the smaller counties, (Warwick for example) have ceased to be the abode of any interest peculiar to its inhabitants, it still retains a right of representation equal to that enjoyed by Shenandoah, the largest county in the State; nor is it competent to the Legislature to remedy this inequality, without producing much greater mischiefs than any which ever have or ever can result from that cause. Because, if the larger counties should be so divided and cut up, as give to their respective parts equal to Warwick in any thing, a right of representation equal to that which Warwick now enjoys, the Legislative body must become much too numerous, unwieldy, and expensive, to be any longer useful; and the people of many of the sub-divisions would be most grievously oppressed, by the necessary burthens of their own mere municipal police. Thus it happens, that while the causes for allowing equal representation to all the different counties in the State, have ceased to apply in many instances, and while the effect of this is remedyless under the provisions of the existing Constitution, the incapacity of the Legislature to provide the proper cure for this confessed evil, has become the source of all the murmuring and complaint we have heard, and is the true cause of the assembling of this Convention. It is not, that the East or the West, the cis-montane or ultra-montane regions of the State, have too much or too little political weight in the Assembly—it is, that the largest counties are put upon a par with the smallest; that Warwick and Loudoun, Halifax and Alleghany, are equalized in representation. This is the inequality complained of, and this is the inequality which we are sent hither by the people to reduce and reconcile, so far as we may find it practicable to do so.

If we confine ourselves to this task, the work to be performed is by no means difficult of execution. The addition of a single line to the provisions existing in the present Constitution will accomplish it; and to such an addition, but little objection will probably be urged. Give to the Legislature the discretionary power of uniting any of the present electoral districts, within which no peculiar interest is believed to exist, to other contiguous districts having similar interests, and the desired object will be attained. Then, under the power they now have, of dividing the larger counties; and under this new power so conferred upon them, of consolidating the smaller, every desirable and practical equality will be at once accomplished. The whole scheme of representation will then remain upon its ancient, unaltered basis, and can be accommodated from time to time to every future condition of things, without changing any principle, or seeking to establish any new foundation.

Instead of adopting a course so simple, so easy, and which, in all probability, would be so satisfactory, as this, it seems to be proposed, to apply a sponge to all the division lines within the State, and to make a perfect *tabula rasa* of the whole Commonwealth. When this is done, new lines must be drawn, and new associations created, in the establishment of which, no regard is to be had (according to the report of the Select Committee) to any thing else but to the number of the free white population, existing within such limits. Such an idea, he believed, never entered into the mind of a single man, before this Convention met, and will not now be regarded without amazement and almost consternation, by any other than a member of this body.

For my part, said Mr. T. I will cordially unite with any, in consolidating the smaller counties every where, until the very least shall assume a proper size. I will unite then in dividing the larger counties, wherever it is desired, until the largest shall cease to be considered as over-grown. In the progress of this work of equalization, however, I can never consent to regard numbers of any sort, *exclusively*, or taxation or property of any kind *exclusively*, or any thing else *exclusively*. I must consider what the interests and convenience of the people to be represented require; and in deciding this question, I must do, what every wise Statesman ought to do: I think, I must regard and pass in review before me, every single circumstance which exists, to influence any part of the State materially.

Let me illustrate my views of this subject, by an example. If you will cast your eye over the map of Virginia, you will see on its extreme Eastern border, a little pe-

ninsula, containing within its limits not a fiftieth part of the territory or population, or probably of the wealth of the State. Suppose this territory, and population, and wealth, reduced to any thing less you please, but still remains respectable, the situation of that peninsula would yet be what it now is. It would still be contiguous to a neighbouring State, washed by the great Atlantic on the one side, and separated from the rest of the State on the other by a great bay, wider than the English Channel at Dover, or than the Mediterranean at the Straits of Gibraltar. This situation, you must perceive, exposes its inhabitants to much greater perils than those of any other part of the Commonwealth; and, at the same time, deprives it of all hope of aid from any other quarter, even in the hour of its greatest need. In the Revolution, and during the late war, these people defended themselves by their own means alone, receiving no particle of assistance from any other portion of the State. Whatever may be thought of the ingratitude of another part, in not erecting monuments to mark the spots where rest the bones of the brave men who fell victims to the diseases of either camp or climate, no tear ought to bedew the cheek of the gentleman from Loudoun (Mr. Mercer) at similar ingratitude here—no Western hero is there interred, for the foot of no Western hero ever pressed that soil. The people of this little peninsula unaided, have maintained and defended themselves from the beginning, will continue to do so to the end, and I thank God that they are able so to do. But this is not all. Our history will inform us, that the people of this peninsula, are the descendants of the earliest settlers in Virginia. Their insular situation must inform us, that the ancient manners and customs of the country, are there preserved more perfectly, probably, than in any other part of the State, where the frequent attrition of various associations, has long since blunted and smoothed down the asperities and sharp points of the habits of antiquity—a different climate, soil, and situation, has necessarily yielded various productions, and invited to the pursuit of occupations there, very different from those existing elsewhere. In short, all these diversities have created an interest peculiar in that section of the country, the like of which is to be found no where else. Now, with a full knowledge of all these facts, would any wise Statesman, in adjusting a scheme of representation for the whole Commonwealth, ever conceive the idea of allowing no representative to such a society as I have described, merely because their numbers, or their wealth, did not rise to the exact height of that arbitrary standard of number or property which he had fixed? Would common prudence justify him in saying to such a people, “It is true an ocean rolls between us; it is true, your situation, manners, habits, pursuits, and interests, are different from ours; it is true you are contiguous to another State, where juxtaposition to you may better qualify it to learn the true nature of your wants, and to extend to your peculiar interests, more protection than we can; but nevertheless I cannot regard any of these things. My rule is, that in allotting representation, respect should be had to the number of free white inhabitants *exclusively*; and as your natural limits contain not a sufficient number of these, no representation can be allowed to you, and you can, therefore, have no share in the administration of the Government designed for the benefit of all.” I need not state what must be the inevitable result of such a course. Every man who hears me, must at once perceive it.

Mr. T. then adverted to the little county of Warwick, containing, as he said, not more than about forty thousand acres of land, and but little more than six hundred white inhabitants. He said, that regarding the situation of that county, or the convenience of its inhabitants, it was scarcely possible to conceive, that any interest could there exist at this day, which was not common to the circumjacent contiguous counties, upon the principles of the basis of representation as now established; therefore, this county could not be considered as longer entitled to a separate representation. But, suppose, Sir, said he, that the river which runs through this little county, precipitated itself in its course over such a cataract as that of Niagara? Does not every one discern in such a circumstance, a cause sufficient to convert the inhabitants of that county into a body of manufacturers? And then is it not obvious, that such an interest would require a separate representation, notwithstanding the limits of the county, its population and property might each remain not greater than they are at present? Justice and policy would surely require this. If so, it is perfectly clear, that the existing basis is the true basis of representation; and, that in the allotment of representation, regard should be had, rather to the interests and convenience of the people, than to their actual numbers, or wealth, or territory.

But, my venerable friend from Loudoun, (I beg pardon of the gentleman for the familiarity of the phrase, but he has ever been my friend) has said, that the principles of all Republican Government required, that representation should be apportioned according to numbers alone, and should be founded on the white population only. Yet, Sir, that gentleman himself tells us, that our existing Government is the best the world has ever known. Is not this Government a Republican Government? Were not the patriots who formed it, wise Republicans? And is it not founded on the purest Republican principles? If gentlemen contend that it is not a Republican

Government, what are we to infer from that eulogy which represents it to be the best Government in the world? Here Mr. T. shewed the inconsistency of the argument urged on the other side, which, while it conceded that the present was not only a Republican Government, but the best of such Governments, yet denied to such a Government any one of the ingredients necessary to the construction of a Republic.

He next referred to the arguments on the subject of the natural right of a majority to govern; contending that a radical objection to all such arguments, would be found in the arguments themselves. Gentlemen contend, that a majority of the people have an indefeasible right to rule the minority; and having established this proposition, to their own satisfaction, at least, they immediately undertake to define who are the people; and by their own definition exclude not less than seven-eighths of the whole population, from the enumeration of that society, the majority of which, derives from eternal and immutable justice, a supposed right to rule the minority. Gentlemen assert, that according to an eternal rule of right, the majority must govern, and then instantly exclude from the enumeration, all except free *white* persons; so making the eternal rules of justice and reason, to depend, not upon the condition of the population as bond or free, but upon the accidental circumstance of the colour of their skins: and pray, Sir, said Mr. T. to what standard are we to refer in order to decide the question of colour, which is considered as so important in deducing a natural right? The native inhabitants of Japan, of China, of Hindostan, of all Southern Asia, of Egypt, the Moors of Africa, the Natives of the Greek Islands generally, together with all the unmixed descendants of the original inhabitants of America, will now be embraced within this supposed rule, that deduces the right of a majority of whites to govern any society from the supposed source of natural law.

If gentlemen had said, that sound policy required, that in Virginia, negroes and mulattoes, whether bond or free, should not participate in the active exercise of any political power, most willingly would he have assented to such a proposition. But when the question is not, who shall possess and exercise political power, but upon what basis ought such power to be erected, he could not comprehend the force of the argument, which, while seeking to fix population merely as that basis, would nevertheless disregard all other than the free white population. Domestic slaves of every sort, whether black or white, may be excluded, under the idea that they ought not to be considered as persons, but as property merely: but why none but a free white person should be enumerated, in establishing the number of the people as the basis of representation, he could not conceive. Women, minors, even aliens, and many others whom none propose to admit to the enjoyment of the Right of Suffrage, are all, nevertheless, to be counted, (provided they be white,) in forming the basis of representation: but none others are to be computed, although they be free, virtuous, intelligent, and rich, as any white man, in the whole State. Suppose, said Mr. T. a Hong merchant was to come hither from Macao, bringing with him numerous connexions and much wealth; or suppose some convulsion in the neighbouring Republics of the South, Mexico for example, should force hither many of the inhabitants of that country, free, virtuous, intelligent, and wealthy; can any possible reason be assigned, why the unmixed descendants of such emigrants, natives of Virginia, should be excluded from the computation of numbers, while every emigrant from any part of Europe, even before he becomes a citizen, must be estimated? Such a rule cannot be traced to any principle of right, or to any maxim of sound policy. The true rule is, that in a representative Government, every important interest in the society should have its particular representative; and that in the election of such a representative, the majority of persons duly qualified according to law, whose peculiar interest he is to represent, should have the privilege of electing him—and as, in defining the society so to be represented, it must be measured by territorial limits, so by apportioning representation to the different electoral precincts of the State, you attain the great desideratum of all representative Government.

Mr. Chairman, said Mr. T. capital and labour are the two great elements of the prosperity of every State; each of these is necessary to the existence of the other, for without labour, capital would be worthless, and without capital, labour would be useless. But although thus essential to each other, between the two there has existed a struggle from the beginning, which, in the very nature of things, must continue to the end of time. To reconcile these jarring elements, and to confine each within its proper sphere, is the business of good Government. But in the adjustment of the powers of Government, if too much influence be given to either of these elements, mischiefs must result to society. If too much weight be allowed to capital, labour will surely be oppressed, and if too much influence be given to labour, capital is at once endangered. Oppressed labour seizes power to redress its wrongs; capital endangered, must purchase power to protect its rights. Although in perpetual conflict, it passes human wisdom to separate these conflicting forces. You might as well expect to separate the soul from the body of man, and to preserve his existence, as to separate capital from labour, and to preserve society. You may subject either you

please to the dominion of the other, but the experiment can only be made by that sort of revolution, which of necessity must end in anarchy and despotism. All which the friend of free Government can desire; all that the wisest Statesman can accomplish, is so to resolve these opposing forces into a third, as to give a new direction to each, which may be sufficient to check, restrain and balance both. This resulting force is Government, which, when deriving its power from both capital and labour, will receive the support of both.

But how is such a Government to be constructed? Certainly not in the mode suggested by the venerable member from Loudoun, as that which he prefers. His plan is, to divide the Legislative Department into two branches, both to be chosen by the same electors; to allow to numbers, that is to labour exclusively, representation in the more numerous branch, which is to be elected annually, and to capital and numbers combined, representation in the other branch, which is to be elected quadrennially; and so to check and balance these opposing forces. Now, Sir, is it not obvious at once, that two bodies, each deriving their authority from the same common source, can never check each other; but that both must obey the direction given to either by the power from which they both proceed? Does not our own experience too, inform us, that a Senate consisting of twenty-four members, sitting up-stairs, can never restrain the power of a House of Delegates consisting of one hundred and twenty members, sitting here? The Senate may sometimes prevent the hasty and incorrect legislation of the House of Delegates; they may dot the i's or cross the t's, or correct the orthography in bills which have passed the House, (if it be allowable to suppose that any member of that body may not know how to spell,) but it never has and never can arrest any deliberate measure which the House is disposed to persist in. The reason of this is very obvious. The Senate is elected for four years in the large divisions of our territory, while the Delegates are elected annually, by the smaller sub-divisions of these large districts. The Delegates, therefore, understand and represent more truly the opinions of their common constituents than the Senators; and whensoever a division of opinion exists between them, the Delegates must therefore prevail. I do not know the fact, but I think I hazard nothing in saying, that the case has never occurred, in which a Senator, voting differently from the Delegates representing the different counties of his district, upon any matter of much importance, has ever been re-elected. What security, then, can property find in such a body as a Senate, against the attack of numbers, represented exclusively in the other House!

But suppose, to avoid a result so obvious as I have stated, the plan should be somewhat changed, and a higher property qualification should be required of the electors of the Senate, than of the electors of the Delegates, the case would not be changed materially. The gentleman from Brooke would immediately proclaim this little body to be a band of oligarchs—others would style it a body of aristocrats, and many would be found to denounce it as the rotten part of the Government, which ought to be put down. With this cry of mad-dog uttered against it, the Senate would be sent forth to the people as an object of their scorn and hatred, and could furnish little protection to rights, for the security of which such an anomalous institution was at first designed.

In every society, there will always be found individuals, who, from the mere fondness of notoriety, and popularity, will oftentimes neglect their own interests, and who may, therefore, be expected to disregard the interests of their constituents. Such was the Duke of Orleans formerly in France: and in the conflicts between persons and property, which must take place in every election of Senators, upon this basis of numbers and property combined, the result must be, that numbers will certainly select the first Mons'r Egalite who presents himself as the professed guardian of the rights of property. In such a society as that which now exists, and I hope ever will exist in Virginia, if ever a separate representation is allowed to persons and to property, if ever they are so arrayed against each other by Government or in Government, we may talk as we please about checks and balances, but it is a delusion to believe, that the smaller can ever stop the progress of the greater power. An Almighty hand may part Dives and Lazarus by an impassable gulph, but the Statesman, who expects to keep them asunder, deceives himself; the struggle for power will and must bring them together again, and although Dives may remain in the place assigned to him, Lazarus cannot. If you wish to secure both persons and property, you must not add fuel to the flame which their natural collisions will always kindle. Instead of dividing them in action any where, you must resolve and combine their forces every where. Your effort should be by mingling them to render it impossible to distinguish the voice of the one from that of the other, and not to arrange them so as that each should be separately heard and understood. You can only accomplish this object by pursuing the example of our ancestors, by arranging representation neither upon the basis of one or the other, but upon the basis of interests, comprehending both within the limits of some certain territory, delineated by convenience.

Let me illustrate this in another way. The capital and labor of every country must be employed in the pursuits of either agriculture, commerce, or manufactures. Here, then, are three great interests existing in every community, all of which are so useful and important to its prosperity, that each ought to be represented, to the end that each may be preserved and promoted. Now, from what cause do these various and distinct interests proceed? It is from local circumstances merely; from the peculiar situation of the spot where they exist. By allowing representation to territory, therefore, you will in effect give representation to the particular interest which inhabits it. Do the trans-Alleghany people ever expect to become commercial? The thing is impossible. They may cut canals wherever they live, and call their boatmen sailors if they please, but God and nature have decreed that commerce shall never find a home there. It must abide upon navigable waters, made so, not by man, but by Him who made man. The interests of commerce, therefore, can never be represented by those who represent that section of the country. Do the people of the alluvial plain, watered by the tide-water, destitute as it is of every mineral production, and without a water-fall of a single foot, expect to become manufacturers? Such an expectation would be equally idle on their part: and the middle region of the State, must ever contain what it now does, the great agricultural interest of the Commonwealth. Each of these great interests ought to be represented; and the proportions of their representation will always be found well measured, by the capital and labor employed in each, and these again by the total population contained within the respective territories wherein they exist.

Again, if you will examine the territories of Virginia, wherein the great agricultural interests are found, I mean on this side of the mountain, (for my topographical knowledge of the tra-montane region does not enable me to speak of that,) you will discover, that taking the line of North Carolina as a base, the Blue Ridge as one of its sides, and some point near the county of Culpeper as its apex, a line drawn from thence to the termination of the tide-water region, will form a great triangle, within which, a slave-holding, tobacco-planting interest predominates. From the termination of the base of the first triangle, the North Carolina line so very near the Atlantic, furnishes the base of a second great triangle, whose apex is on the Potomac, and within which is to be found a slave-holding cotton-planting interest. The residue of this lower country will comprehend the grain-growing interest. Now all these three great interests, although agricultural, are, nevertheless, as distinct from each other as are those of agriculture, commerce, and manufactures; and like the latter, each of the former interests proceeds from local circumstances, easily to be ascertained, and circumscribed by well-defined geographical lines. But this is not all. The territory occupied by each of these three great agricultural interests, will be found intersected in all directions by wide water-courses, cutting off and preventing all intercourse and association between those who may chance to dwell on their opposite sides. Convenience will, therefore, require, that in allowing representation to each of these great agricultural interests, regard should be had to these local circumstances, to the end that the responsibility of the representative may be secured. Having fixed representation upon such a basis as this, in graduating and apportioning it to the different precincts delineated by a due regard to the convenience of their inhabitants, you may then, but not until then, resort to numbers, as furnishing the scale and measure by which the different interests abiding within these precincts may be ascertained and compared. But in resorting to numbers, you should not confine yourself to white numbers exclusively, but should consider every other circumstance in any way connected with this subject. Such was the course pursued in re-arranging the Senatorial Districts in 1816; and if a similar course was pursued upon this occasion, it would lead to a conclusion satisfactory and agreeable to all.

Mr. T. said, that having referred to this Act of 1816, which had been several times mentioned in the course of debate, and which, as he believed, was not understood generally, it might be well for him, who had a great share in the passage of that law, to give some account of its history, and of the principles upon which it was established.

During the course of the debate on the proposition to call a Convention in the year 1816, it was frequently said that the Western country was most unequally represented in the Senate; and that this inequality being created by the existing Constitution itself, could not be remedied by any act of the ordinary Legislature. This idea was new to him. He had never heard it suggested before, nor had he any confidence in the suggestion then. These opinions were stated by him in the debate, coupled by the declaration, that he had entertained little doubt it was competent to the Legislature, to arrange the Senatorial districts, whenever, in their discretion, they saw fit to do so; and, that this had been done several times already. In consequence of this declaration, after the Convention Bill passed, he was applied to by one of the members from the Western part of the State, to assist in an effort to re-arrange the Senatorial districts, in a manner more equal than they were then arranged. To this appli-

cation, he yielded a ready assent; and supported, with all his ability, the motion for leave to bring in such a bill. This motion was opposed by the gentleman from Brooke, (Mr. Doddridge,) and others, upon the ground, that it was a measure, not warranted by the Constitution. But, after a warm debate, the motion was carried, and a Committee was appointed, (of which he was one,) to bring in such a bill.

He said, that according to the basis of taxation, the West was found entitled to seven members, and a small fraction over—according to the basis of Federal numbers, they were entitled to seven members, and a large fraction over—and according to the basis of white population, they were entitled to nine members, and a small fraction over—computing according to the Census of 1810. Then, by adding all these results together, and dividing by three, it was found, that the West would be entitled to eight members, and a fraction over. Believing that the East, which would be entitled to fifteen members and a fraction, could better spare the fraction than the West; and being entirely averse to differing with his Western brethren concerning a fraction of a representative merely, for his part he willingly assented to give up this fraction to the West, who thereupon would have nine Senators, while the East retained fifteen—and upon a perfect understanding of these proportions, were all the arrangements of the original bill made.

The gentleman from Brooke is mistaken when he says, that I offered an amendment to this bill, the object of which was to compute slaves in the apportionment of the Senators. I never made any such proposition, or wished to amend the bill in any other way whatever.

[Mr. Doddridge said, that he had not meant to refer to this bill. His reference was to the bill for calling a Convention.]

Mr. Tazewell said, he was satisfied, that the gentleman from Brooke did not intend to make a mis-statement, but it was certain that he had referred to the Senatorial bill, not only in his speech here lately, but upon several other occasions both here and elsewhere. When the Senatorial bill was to be adjusted in the Committee, it was distinctly understood by every member, that the proportions between the West and the East were to be nine and fifteen; and although from what he had since heard, he thought it highly probable, that afterwards, while adjusting these proportions to the different parts of the State, gentlemen might have had regard to white numbers only, yet if they did so, no such idea was ever suggested to him, either in or out of the House. He was content with the proportions mentioned and agreed upon, and for his own part, was perfectly indifferent as to the further details of this bill.

In conversation with the friends of the measure, it was agreed, that as the West was then entitled to representation in the Senate, fully proportioned to their quota of the land-tax paid by them, if they wished to augment this representation, they ought to have a re-assessment of the lands, and so to enlarge their quota of this tax. This suggestion was readily accepted by the gentlemen from the West, favourable to the bill, which, therefore, assumed the shape it now wears, of a bill to re-apportion the land-tax, and to re-arrange the Senatorial districts.

Such was the history of this law; and he had hoped, that a perfect knowledge of the benefits derived from it, and the general satisfaction with which it had been adopted, would have induced the pursuit of a similar course now. The people of the West were then satisfied. They confessed, that they had no cause to complain of unequal representation in the lower House; and when the inequality of representation in the Senate was so redressed, they expressed their entire content with the arrangement made. Let but a similar course be again adopted, and it will terminate in a similar result. Add but a single line to George Mason's Constitution, authorising the Legislature, from time to time, in their discretion, to deprive counties and corporations which may have declined too much in population or in wealth, of the representation to which they are now entitled, and every evil of unequal representation which is now complained of, will be at once removed.

But the gentleman from Augusta, (Mr. Johnson,) has told us, that this is a contest for power merely; that disguise it as we might, it must still present itself as a question of power. If this be so, we cannot surrender the smallest fraction, without an abasing degradation. The power we now possess, we are well content to share with our brethren of the West, provided they can satisfy us, that it is right we should do so. But if the power is demanded by them merely because it is wanted; and if it is expected, that the East must yield until the West is satisfied, he for one would yield nothing to such a demand. He would at once place his foot on the spot from whence he would never recede, be the consequence what it might. To a spirit of just compromise he was prepared to yield much, but to a strong demand nothing.

Mr. Chairman, said Mr. T. I came here anxious to preserve so much of our long-tried Constitution, as in practice had been found good, and no more. I came here prepared to reform at once every part of it, from the operation of which any practical mischief had been found to result. Nay, I am willing to go still further, and am ready to provide a seasonable remedy for any probable mischief, which may be rea-

sonably supposed likely to result hereafter. But I cannot consent to pull down the whole venerated fabric to its foundation, merely to build up another; to change every thing, to reform every thing, and to alter all. Those whom I represent have no such wish as this, nor did they depute me to co-operate in any such undertaking. They had heard complaints and murmurs at different times, proceeding from different quarters, that the existing Government had produced mischievous effects. Such mischiefs they have never felt themselves, but believing it probable that they might exist, although unknown to them, they sent me hither to enquire into the fact; and when it should be seen to exist, to apply to the evil the proper corrective. To the attainment of this object, I will honestly and sincerely co-operate with any. But when I am told, that the question to be discussed and decided is nothing else than a mere question of power; that the West want that which the East have, I can only say that such a question can never be decided here. Jurists may discuss and decide questions of right; Statesmen may settle and adjust matters of political expediency; but there is but one earthly forum to which an appeal can ever be made for the determination of a mere question of power; and before that forum, there is but one argument which ever can produce the slightest effect. We are told, that in former times, a strong demand was made upon the Government of ancient Sparta, accompanied by a declaration, that if the demand was not granted, the demandant would come and take it. The laconic answer to this demand was, 'Come and take it.' The demandant came, but did not obtain that which he meant to take.

Mr. Doddridge said, he wished to make some observations in reply to the statements of the gentleman from Norfolk. That gentleman had said, that by the law of February, 1817, reforming the Senatorial representation, reference was had, not only to white population, but to interests and other circumstances, from an examination of which it resulted that the West were entitled to eight Senators and a fraction, and that the East yielded that fraction to the West, which gave them nine members. Mr. D. said, he would not rely on his memory and oppose it to that of the gentleman from Norfolk, but he would appeal to facts which could not err, whether they were tested by Pike, Gough, or Dilworth.

The Senatorial bill of February, 1815, was based on the Census of 1810. In 1810 the whole white population was 551,000, disregarding the fractions of a thousand—of this population, 212,000 were found West of the Blue Ridge. Out of twenty-four members of the Senate, this population entitled the West to nine members, and a large fraction which they lost; so that the Senatorial arrangement of that year was regulated by white population, and by nothing else. By the law of 1817, it required several annual elections to give the West their nine members. These members did not come into the body until 1820. The Census of that year showed that at that period the West had upwards of 48,000 unrepresented. Since 1810, the increase of Western population has been nearly 107,000 and of the Eastern 23,000, leaving West of the Ridge upwards of 82,000 souls now unrepresented in the Senate.

The gentleman had said that in 1817, the West had their full share in the House of Delegates. How correct that statement may be, will appear from the following facts: In 1817, there were ninety-nine counties and four towns represented. This produced a House of two hundred and two members. There were then thirty-four counties West of the Ridge, having sixty-eight members. The population being 551,000 inhabitants, and the number of members two hundred and two—the Western population being 212,000, entitled them to seventy-eight and a half members instead of sixty-eight, being a deficiency of ten and a half members, which being added to the East gave that quarter of the State an advantage on a divided vote of twenty-one.

There was as little accuracy in the other assertion, that the West were satisfied with the Senatorial arrangement, declaring it to be one that justice and equity required. So far from this, most of the members from the West voted against the Senatorial bill in all its stages, and never agreed to accept it until the Convention bill which went to the Senate was lost.

The inequality of Western representation in the House of Delegates has increased since 1817. The whole white population is now 682,000 of which 319,000 are West of the Ridge. Since 1817, the following counties have been erected in the West, viz: Morgan, Preston, Alleghany, Pocahontas, Nicholas and Logan, making the Western counties forty, and giving to the West eighty votes in our House of Delegates of two hundred and fourteen members. By the above numbers, the West are entitled to something more than one hundred members instead of eighty, and the deficiency of twenty being added to the East, gives to that quarter an advantage of forty votes.

Mr. Chapman Johnson said, he was sorry there was some misrepresentation of his remarks, by the gentleman from Norfolk, (Mr. Tazewell.) He regretted that this should have been the case, as he believed that gentleman was disposed to consider what he had said in a spirit of fairness and candor. He did say, that the question we were considering was a contest for power. He had said, disguise it as we would,

view it in any aspect we could, if we come back to a candid consideration of it, it was a question of power and nothing else. He did not mean to be understood as intimating that this was a lawless controversy for power, in which each was trying to get what he could, *per fas aut nefas*. This was far from his opinion, and his reason for addressing the Committee, was to show that in the principles of either party this question was not so intensely important as either imagined. He did not mean that either party contended for power on any principles but those which they could justify to their own consciences as right, but this question of representation was a question of power, although certainly all the business of the Convention was not of that character. Is it not the question whether you will give the *power* of representation to interest, numbers or wealth? To any or all of them? Is it not the question whether you will distribute the power of the Government among the elements of the Commonwealth? No matter what is the basis, it is the same. He did think that his language would have been viewed in this way, as it ought to have been. It would be found that no one was more disposed to settle the question of power, so as to meet all the wishes and interests of the State, than he was. He knew it was impossible to meet those wishes, but he would come as near as possible, for it was his sincere desire that all things should go on harmoniously. He should vote against the proposition to make the Federal numbers the basis, for reasons which it would not now be necessary to repeat. If what he had said was remembered, his reasons would be known. He would vote against it, as much on account of its effect on the people he represented, as on account of its effect on the whole population. He should consider as satisfactory, qualified voters for both branches. If he could not choose—if Federal numbers should be preferred, as the limitation to be given to the Senate to operate as a check on the House of Delegates, he should have very little to regret on account of the power given over his constituents by that basis, over that which would have been given by the basis he recommended. A single remark as to the power of the Senate to check the power of the House of Delegates. He did not mean to refer to his experience there, nor to resist the argument, that the Senate for one, two, three, or four years might withstand the House, but that it must at last yield, because both branches are from the same people. He would say nothing farther on that argument, except, that if the Federal numbers were adopted in the Senate, and the House of Delegates established on the basis of white population, we ought to suppose that each should concur in two or three years in any great question. It ought to be so. He thought the responsibility of the representatives was a sufficient security for their continued regard to the public interests. The members of the Senate are elected for a longer period of time, and that circumstance might render that body less efficient as a check—but the member of the House goes back to his own constituent body annually; so that when you give the white basis to this body, you establish the best of all checks. He had thought it right to state this much; he should not attempt further argument. The Committee ought not to indulge him any more, as he had already consumed so much of their time. He would not sit down without saying, that to the bitter sarcasms, gratuitous imputations and learned jests of the gentleman from Charlotte, (Mr. Randolph,) he had no plea to enter, no answer to give. However low he might stand in the opinions of others, and they could not estimate him lower than he estimated himself, yet he had self-respect enough not to answer that gentleman, and if he had not, respect for this Committee would impose silence upon him.

Mr. Mercer, rose to corroborate what had fallen from the gentleman from Brooke, on the subject of the Senate Bill in 1816. The basis of that Bill was rested on the white population, and ought there to stand. He was second on the Committee, and owing to the indisposition of the Chairman, who could not attend, the duties of Chairman devolved upon him. A gentleman from Berkeley, not a member of this Convention, was the one who collated the counties to form the basis. He had heard no complaints. Another word and he had done. The gentleman from Norfolk, had said, that in the original formation of this Government, regard was had to the representation of interests, and that the old House of Burgesses was composed with reference to that distribution of interests. He saw no evidence in the topographical or other character of the country, to sustain the view of the gentleman from Norfolk. The gentleman from Norfolk, had gone so far as to divide the Commonwealth into a number of triangles, to shew the different interests into which the State was divided. He considered these interests as forming a basis as fluctuating as any other that could be determined.

Cotton was of recent cultivation. In Loudoun, where there were formerly tobacco fields and wheat-patches, there are now wheat-fields and tobacco-patches. The plan, therefore, of the gentleman from Norfolk, might be applicable one day, and altogether inapplicable a few years hence. Mr. M. made some other observations in reply, but we did not correctly catch their import. He concluded with stating, that the counties had been created for judicial, not for legislative purposes; and all applications to divide counties were founded in the difficulty of going to the courts to

serve either as jurors or witnesses. He had never heard any other causes assigned, although he had been in this Hall on many occasions, when applications of this kind were made. He hoped that the new basis would not supersede that of the free whites.

Mr. Cooke said, that if he was correctly informed in the Constitutional History of Virginia, the gentleman from Norfolk, (Mr. Tazewell) had been singularly infelicitous in attempting to support, by a reference to that history, his theory of the true principles of representation. For I find, said Mr. Cooke, that he, too, has his *theories* of Government, as well as the wild democrats of Middle and Western Virginia.

His theory is, that there should be a representation of *interests*, in the legislative bodies, as contradistinguished from the representation of numbers; and, to support this theory, he has attempted to shew that it has been uniformly acted on in Virginia, even from the first establishment of legislative bodies in the Colony. For this purpose, he has drawn a picture of the Colony at that period of its infancy when the population was dispersed in detached settlements, or plantations, separated from each other by "mighty waters" and impenetrable forests. He next *assumes* it as a fact, without even *attempting* to prove it, that each of these settlements had some peculiar interest of its own—I mean an interest variant from that of its neighbour settlements. He alleges that a separate representation was given to each of these settlements, *because of the existence* of these separate and variant interests: That, in process of time, when the settlements were enlarged so as to come in contact with each other, it became necessary to designate, by artificial boundaries, the limits of these separate and distinct interests: That, to effect this purpose, the Colonial Legislature, in 1634, erected them into counties, giving to each county an equal representation in the House of Burgesses. And thus he shows that his favorite theory of the representation of interests, *as interests*, and contradistinguished from the representation of numbers, was the theory of the earliest law-givers of the Colony; and he asserts that it has remained, to the present day, the theory of representation practically adhered to in the Constitution of Virginia, and so is entitled to prescriptive respect.

Now, Sir, I apprehend that in taking this view of the subject, the gentleman has fallen into a mistake not uncommon with theorists. Instead of conforming his theory to the facts, he has made his facts conform to his theory.

I apprehend that a more accurate version of our early Constitutional History will shew, that if any principle of representation has been adopted in Virginia, it is substantially, the principle which is recommended in the Report of the Select Committee—the principle, that in apportioning representation, regard should be had to the free white population exclusively.

The first chapter in the Constitutional History of Virginia is, the ordinance of the 24th of July, 1621. On that day, "the Treasurer and company of adventurers of the city of London, for the first Colony in Virginia," passed an ordinance establishing the Constitution of the Colony. (1) By this ordinance, they constituted a General Assembly, to consist in part, of Burgesses, or Representatives, to be chosen by the "*inhabitants*" of the different plantations, or settlements. And, as there were, at that time, no slaves in the Colony, the free inhabitants of the country were of course the *basis of representation*. And though the ordinance did not direct, that the free inhabitants should be *equally* represented, yet, as *equal* representation, where there is a representation of the *people*, is the most obvious, and natural idea, it is to be presumed, that the company contemplated a representation substantially equal. I see no trace, in this first organic law of Virginia, of the representation of *interests*, and no evidence, any where, that there were any peculiar, separate and distinct interests, appertaining to the different plantations or settlements. Their contiguity, would seem to contradict the idea; and, in fact, their interests were homogeneous, if not identical.

Proceeding to the next era in the Constitutional History of the Colony, we find the gentleman from Norfolk, asserting, that in 1634, when the forests, which had constituted, for a time, the natural barriers between, and limits of, these supposed distinct interests, had disappeared, and they were in danger of being blended together, artificial limits were substituted, counties erected, and *two Burgesses, or in other words, equal representation, given to each county*. And this measure, he says, was adopted, with a view to preserve the separate representation of these distinct and separate *interests*. Here is, indeed, a singular adaptation of the *facts* to the *theory*. But, Sir, it happens, unfortunately for the *theory*, that the *facts* are not historically true. It is true, that the Colony was first divided into counties in 1634; but it is not true, that the counties were created with any, the most remote, reference to *representation*, at all. The counties were created for *two avowed purposes, and for no other*. I mean the organization of the military force of the Colony, for defence against the Indians, and the administration of justice. (2) Not a word is said about the *representation* of

(1) See Hening's Statutes at Large, vol. 1, p. 110.

(2) See Hening's Statutes at Large, vol. 1, p. 224.

these counties, or about the representation of *interests*, or *any* representation at all. And, in fact, the counties were not represented *as* counties, till the year 1661; nor does any, the smallest *connexion* between *counties* and *representation* appear in the Legislative History of the Colony, till 1645. It is true, that in the last mentioned year, an Act was passed, declaring that not more than *four* representatives should be sent from each county, except James City county, which was allowed six—besides one for the town. (3) But, it is equally true, that at the time of, and after the passage of that Act, the parishes also were allowed to send representatives to the Legislature, whenever they thought proper. (4)

It was not until 1661, as I have said, that the counties, *as* counties, were represented in the General Assembly. In that year an Act was passed, declaring in effect, that the House of Burgesses should consist of two representatives, and no more, from each *county*, together with one from James City, “the metropolis of the country.” And, by the same Act, it was declared, “that every county which should lay out one hundred acres of land, and people it with one hundred tithable persons,” should have the privilege of sending an additional Burgess. (5)

By adverting to the recital of that Act, you will find that the cause assigned for the reduction and *equalization* of the representation of the counties, was the *expense* of maintaining the great number of Burgesses sent from the counties and *parishes*. “Whereas, the charge of assemblies is much increased by the great number of Burgesses,” &c.

Thus you perceive, Sir, that the principle of representation in Virginia, if it deserves the name of a principle, received its final consummation, its last finish, from a Colonial Legislature of unlettered tobacco-planters in 1661. The Constitution of Virginia, which is gravely declared, even on this floor, to have been the work of the sages and patriots of 1776, *was actually formed and finished in 1661, and has never since been modified, in this great and leading feature of the representation of the people.* This *admirable* regulation—the equal representation of the counties, which is recommended to our love and veneration, as the work of our glorious ancestors in 1776, was, in fact, a paltry Colonial regulation—a device to save money—a matter of pounds, shillings and pence!

It is true, that the men of '76 did not alter it. And *why* did they not alter it? Simply because *they could not*. The infant Commonwealth was engaged, as I had occasion to remark in a former debate, in a war, in which its very existence was at stake—in a war which required the united direction of all interests, and of its whole strength, against a foreign enemy. The sages and patriots who composed the Convention of 1776, were wise and *practical* men. What extreme folly, what absolute insanity, would it have been, when hostile squadrons were riding at anchor in Hampton Roads, to say to the smaller counties, exposed by their position to the full operation of all the seductions and all the threats of the enemy, “*you must surrender a part of the power you have enjoyed under the Kingly Government for one hundred and seventy years.*” Sir, the members of the Convention of '76, had too much good sense; too much practical wisdom—to attempt so mad and ill-timed a reform. They said, what they were obliged to say, that the representation of the counties should remain as it was.

Thus, Sir, it appears, that the idea of the gentleman from Norfolk, that the representation of interests, *as* interests, contradistinguished from the representation of numbers, has been from the first settlement of the Colony, the theory of our Government, has no foundation in history; and that the statement of facts which he has made to support his theory, is altogether erroneous. That the Act of 1661, which established the equal representation of the counties, considered at this day as the highest stretch of political sagacity, so far from having been intended to establish the principle that *interests* and not numbers should be thereafter represented, or *any* principle, was a mere fiscal regulation, of which penuriousness, and not political wisdom, was the author and source.

In fact, Sir, since the ordinance of 1621, no *principle* of representation, deserving the name of a principle, has ever been acted on. We are assembled here to declare what the principle of representation *ought to be*, and shall be, in all time to come.

The question what *is* the true principle, is one which I have heretofore discussed, and shall not now touch. The gentleman from Norfolk says, that the true principle by which to regulate the apportionment of political power, is the representation of all the different *interests* of society—as interests. The Bill of Rights declares, that the true principle is the equal representation of the *people*. I am content to rest the question on the relative weight of the two authorities.

(3) See Hening's Statutes at Large, vol. 1, p. 299.

(4) See Hening's Statutes at Large, vol. 1, pages 411, 421, and passim.

(5) See Hening's Statutes at Large, vol. 2, p. 20.

Mr. Leigh said, that reference having been made to the Colonial Government, to disprove the statement of the gentleman from Norfolk, he would read an extract from the history of that Government, for the accuracy of which he would vouch, as he took great pains to ascertain facts. Mr. Leigh then read a note which is appended to the Revised Code, first volume, page 38.* It appeared, he said, that Bacon, a rebel, was the first who adopted the notion of Universal Suffrage in the country, and that he had it from the soldiers of Cromwell's army.

He stated, that the substance of the note which he had read, was confirmed in its accuracy by the late Judge Roane, and said a few words as to the manner of dividing the State into plantations, districts and hundreds, all founded on that principle of interest which the gentleman from Norfolk had alluded to. If that principle was not avowed, there could be no doubt that it was the principle.

Again, he stated that the College of William and Mary was allowed a representative until the commencement of the revolution. It was represented in the Convention of 1775. Why was this, but that the principle of the interests of different branches was acted on in the apportionment of representation? Here was a representation of the learning of this College, which had been until lately a most useful institution, and he hoped might become so again. He considered that the gentleman from Norfolk had been fully sustained in his statements and views.

Mr. Cooke said, that he had not learned the constitutional history of Virginia from the notes to the *Revised Code*, but from the documentary and legislative records set

* As to the form of the Colonial Government, for which this Constitution was substituted, see 1 *Chart.* § 7. 8. 15. 1 *Hen. st. at lar.* p. 60, 1, 4. *Royal instructions for the government of the Colony, Ibid.* p. 67. 75. 2 *Chart.* § 8. 9. 10. 11. 12. 13. 14. 15. 23. *Ibid.* p. 89, 90, 1, 2, 5. 3 *Chart.* § 6. 7. 8. *Ibid.* p. 102, 3.—By the 14th section of the second charter and the 8th of the third, the power of establishing a form of government and magistracy for the Colony, was vested in the council and general court of the Virginia company in England; which, on the 24th July, 1621, ordained a form of government accordingly; whereby the powers of the Colonial government were vested in a governor and council of state, appointed by the company in England and holding during its pleasure, and a house of burgesses, two from every town, hundred and particular plantation, to be respectively chosen by the inhabitants; and this council of state and house of burgesses formed the Colonial legislature, called the General Assembly. The Colonial government was directed to conform, in legislation and jurisprudence, to the English government and laws; and it was provided, that no law or ordinance made by the General Assembly, should be valid, unless ratified by the general court of the company in England, and returned so ratified under its seal. See this Constitution, and the commission and instructions to the first governor under it, 1 *Hen. st. at lar.* p. 110. 113. 114. In 1624, the crown suppressed the Virginia company by proclamation, and resumed the powers granted to the company; but the form of government it had given the Colony, remained in substance unchanged. It appears, that the constitution of the Colonial government was amended by George I. and instructions were given by George II. to the governor Lord Albemarle, for the regulation of the government according to the amended constitution: but these papers are not to be found. The King always retained the control over the Colonial laws, and even exercised the power of suspending and repealing them; powers, often exercised capriciously, always complained of as a grievance, sometimes disputed, and at length assigned as one of the causes of the revolution; see 5 *Hen. st. at lar.* 432. This royal prerogative had a most important influence on the legislation of the Colonial government. Counties or shires were first established in 1634. 1 *Hen. st. at lar.* p. 224. It seems from our ancient records, that at first, in practice, neither the towns, hundreds and plantations, while they were represented, nor the counties, after the burgesses were elected from them, were restricted to two or any fixed number of burgesses. In 1645, the number was limited to four for each county, except James City, which was allowed five, besides one for Jamestown, the seat of government; 1 *Hen. st. at lar.* p. 299. Afterwards, particular parishes, and then all parishes, were allowed to send one or two burgesses; *Ibid.* 250. 277. 421. In 1660, the number of burgesses was limited to two for each county and one for Jamestown in James City county, with like privilege to every county, that would lay out 100 acres of land, and people it with 100 titheable persons; 2 *Ibid.* p. 29. 106.—The 7th article of the present constitution, provides that the right of suffrage for members of both houses of Assembly, shall remain as exercised at present. By the constitution of July 1621, above cited, the right of suffrage was given to the inhabitants; afterwards, it seems, only freemen were allowed to vote; 1 *Ibid.* p. 333, 4. then only housekeepers; *Ibid.* p. 412. then all freemen again, *Ibid.* p. 403. 475. then "freeholders and housekeepers, who only are answerable for levies;" 2 *Ibid.* 280. then, by Bacon's laws, all freemen again; *Ibid.* 356. But in 1677, the King instructed the Governor, that the members of Assembly should be elected by freeholders only; *Ibid.* p. 425. In 1684, it was resolved, that all tenants for life had an undoubted right of suffrage; 3 *Ibid.* 26. In 1699, the right of suffrage was confined to freeholders (excluding women, infants and recusants convict) resident in the respective counties and towns; *Ibid.* p. 238. In 1736, the right of suffrage was confined to freeholders of an hundred acres of unsettled land or twenty-five acres of improved land, and all freeholders in towns, but with a right to vote, only in the county where the land or the greater part of it lay; 4 *Ibid.* 475, 6. The city of Williamsburg and the borough of Norfolk were allowed a representative, by their charters, by which the right of suffrage of the citizens and burghers was regulated, but afterwards somewhat narrowed by law; *Edi.* 1763, p. 122. 287. It seems, that till 1723, free negroes, Indians and mulattoes, might vote at elections; but by the acts of that year, c. 4. § 23. *Edi.* 1733. p. 344, they were disqualified; and that particular section of the act was not repealed, though the rest of it was by royal proclamation in 1724. *Edi.* 1769. p. 15. note (a). *Edi.* 1762. p. 103. By the act of 1769. c. 1, the quantity of unimproved land, necessary to qualify a freholder to vote, was reduced to fifty acres; but this act was suspended until the royal approbation should be signified, and such approbation was never signified. The ordinance of the convention of 1775, providing for the election of delegates to the convention of 1776, extended the right of suffrage to free white men, inhabitants of Fincastle and West Augusta, in possession of the requisite quantity of land, and claiming freeholds therein, though they should have obtained no patents or legal titles to their lands.—Thus stood the right of suffrage when the constitution was adopted. By the act of 1785, c. 55. § 2. the qualification of the freholder in respect to the quantity of unimproved land was reduced from 100 to 50 acres; the legislature either regarding the act of 1769, as effectual, notwithstanding the want of the royal assent; or, perhaps, considering that while the principle of freehold qualification was preserved, a change as to the quantity of land was consistent with the constitution.

forth at length in "Hening's Statutes at Large." I am, nevertheless, thankful, said he, to the gentleman from Chesterfield, (Mr. Leigh,) for reading the long and elaborate note from the Revised Code, which has refreshed my recollection of sundry particulars which I pretermitted in the sketch that I gave of the history of representation in Virginia, because I did not consider them precisely "germane to the matter" under consideration. I am yet to learn, however, in what point or particular I have misstated the historical facts which I undertook to state. I said, and I repeat, that the ordinance of 1621 recognized the free "*inhabitants*" of the Colony as the basis of representation, and I have heard nothing inconsistent with that statement in the history that has been read by the gentleman from Chesterfield.

I *thank* him, however, for calling the attention of the Committee to the history of Suffrage in Virginia, as I think *that* history replete with valuable and interesting facts. The learned gentleman, Sir, has ventured to say to this Committee, that the idea of Universal Suffrage was never heard in Virginia, till it was started in England by those crazy enthusiasts, the "*agitators*," in the time of Cromwell; and that it was through them introduced into the Colony. I confess that I heard this statement made with no small surprise.

What is the meaning, Sir, of the phrase "Universal Suffrage," as commonly used and understood by intelligent men? Does it mean a Right of Suffrage belonging to, and exercised by, all the men, all the women, and all the children of the community? Such an absurdity never entered into the head, even of "*a reformer*," however "*hardened his heart might have become by experimenting on the rights of man, to ascertain how large a dose of French principles might be administered without causing their destruction.*" It means a Right of Suffrage exercised by all the free *men* of a community. And precisely to this extent was the right exercised in the Colony of Virginia from the year 1621 till the year 1655. The ordinance of 1621 secured the Right of Suffrage to all the free "*inhabitants*" of the Colony. And I defy the gentleman from Chesterfield, with all his constitutional lore, to show, by a reference to the legislative history of the Colony, that it was taken away, or even assailed, before the passage of the act of 1655. In that year an act was passed declaring, "that all house-keepers, whether freeholders, leaseholders, or otherwise tenants, should only be capable to elect Burgesses: Provided, that this word house-keepers, repeated in this act, extended no further than to one person in a family." (1)

And here, Sir, we have presented to us, the curious discrepancy between the statement made by the gentleman from Chesterfield and the real facts of the case: and not discrepancy only, but absolute contrariety. His statement is, that Universal Suffrage originated in England, with the military "*agitators*" in the time of Cromwell, and was thence, and *at that period*, transplanted into Virginia, where it was before unknown. The *fact* is, that it had existed in the Colony from the earliest period of its legislative history, and was *first assailed* in the time of the "*agitators*" of Cromwell, who, in 1655, was at the height of his power and the sovereign of Virginia. Thus, Sir, these crazy "*agitators*," these English republican enthusiasts, *destroyed*, instead of introducing Universal Suffrage. They were the first to introduce rationality into the theretofore irrational regulation of the Right of Suffrage. I say *rationality*, Sir, because I am no advocate for Universal Suffrage. God forbid that I ever should be.

The act of 1655 was repealed, however, in the following year. The repealing act declares, in the quaint language of the age, that it is conceived to "be something hard and unagreeable to reason, that any persons shall pay equal taxes, and yet have no votes in elections; and that so much of the act for choosing Burgesses be repealed, as excludes *freemen* from votes." (2)

With the exception of this interval of a year, Universal Suffrage prevailed in Virginia, from 1621 till 1670. In the year last mentioned, an act was passed declaring that "none but freeholders and house-keepers, who only are answerable to the public for their levies, should thereafter have any voice in the election of any Burgesses." (3) This limitation of the Right of Suffrage was unpalatable to the colonists, and was set forth as *one* of the grievances by which the popular insurrection of 1676 was justified. I call it a popular *insurrection*, because the phrase is more agreeable to my republican notions than the word "*rebellion*," used by the gentleman from Chesterfield. *Rebellion*, Sir! then what were the men of 1776, but rebels against the royal authority! Nathaniel Bacon was a *rebel*, who, perhaps, wanted only a wider theatre of action and a more protracted span of existence, to be the Washington of his age. He rose in arms against oppression, and a democratic Legislature, or one under his control, while it redressed many *real* grievances, repealed the limitation of Suffrage,

(1) See Hening's Statutes at Large, vol. 1, page 412.

(2) See Hening's Statutes at Large, vol. 1, page 403. The repealing act *precedes* the act repealed in the *paging* of "Hening's Statutes at Large," in consequence of a mistake in the *MS.* "not discovered in time."

(3) See Hening's Statutes at Large, vol. 2, page 280.

imposed in 1670. His democratic code was repealed in its turn, in 1677, and two regiments of British soldiers were sent by his most gracious Majesty, King Charles II. whose Government the gentleman from Chesterfield calls, by way of distinction, "the lawful Government," to disseminate in the Colony more *correct notions* concerning civil and political liberty. This worthless tyrant—the *most* worthless that ever filled the throne of England—did not condescend to ask of the trembling Burgesses, whom he assembled at the very mouths of his cannon, and at the very point of his bayonets, *a legislative act establishing the freehold limitation of the Right of Suffrage in Virginia*. He ordered his Governor, in his private letter of instructions, under his royal hand, "to take care that the members of the Assembly should thereafter be elected by *freeholders only*." (4) And thus, Sir, the freehold limitation of the Right of Suffrage became the *law of Virginia*; and so it has remained to the present day: Modified, to be sure, from time to time, by subservient Colonial Assemblies, in regard to the quantity of land necessary to confer the right, but still the *freehold limitation*. And with these slight modifications, it remains the law and the Constitution of Virginia to the present day. It was, in 1677, then, and not in 1776, that this boasted regulation, the acme of political wisdom, became a part of the Constitution of Virginia. It was dictated by a tyrant, and thrust down the throats of the people of Virginia at the point of the bayonet. And *this* is the principle of our Constitution which we are called on to venerate—to bow down and worship, as the wisest and best of all the institutions *formed in 1776 by the sages and patriots of the revolution*. This is the institution which is the great safeguard of property, and the palladium of our liberties.

Sir, I have said that the Constitution of Virginia, as it regards this great and vital provision, was matured and completed in 1677. The Convention of 1776 *found it* established and matured, and they left it *untouched*. And *why* did they leave it untouched? Were they in love with the memory of its author? Or were they true republicans, as they unquestionably were partial to aristocratic distinctions and privileged orders? No, Sir; they left it untouched, because they dared not touch it. It had taken deep root, and could not be torn up with safety, while so many elements of discord were already at work, and threatened to add the horrors of a *civil* to the dangers of a *foreign* war.

Moreover, the poisonous plant, *aristocracy*, had grown up and flourished under the shadow of the tree of *royalty*. A privileged class had been created, not only by the establishment of exclusive political privileges, but by extensive grants of land to the favorites of the Crown. There was, therefore, a *landed*, as well as a *political* aristocracy. It was, like all privileged classes, tenacious of its exclusive privileges, and like all wealthy aristocracies, proud of its wealth. To a class like this, the authors of the Bill of Rights, genuine and bold republicans as they were, did not *dare* to say, in the heat of a war which put in requisition all the wealth and all the resources of the country, "Your reign shall cease—your power and influence are at an end."

They said, with a mournful and sententious brevity, "The Right of Suffrage shall remain as at present exercised."

This, Sir, is a true history of the rise and progress, and unhappily, of the present state of the Right of Suffrage in Virginia.

Mr. Leigh said, that the gentleman from Frederick needed not to inform him that he had not learned the history of Virginia from the note to the Revised Code. His object had been merely to put the Committee in possession of the facts which were there stated. The gentleman had not only studied out of a different system of law, but also out of a different system of general history, or he would not have said that Bacon's insurrection, which grew out of a private feud, was a stand in defence of the rights of man.

The question was then taken on the motion of Mr. Leigh, to amend the resolution, which motion was decided in the *negative*—Ayes 47, Noes 49.

Some difficulty occurring in the count, the names of members were called over; but as the vote was taken in Committee of the Whole, the rule of order does not permit the yeas and nays to be recorded on the Journal. We have obtained, however, the following list, which we submit to satisfy the curiosity of readers.

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Barbour of Orange, Stanard, Holliday, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Mennis, Taliaferro, Bates, Neale, Rose, Joynes, Bayly, Upshur, and Perrin.—47.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Monroe, Mercer, Fitzhugh, Henderson, Cooke, Powell, Opie, Griggs, Naylor, Donalson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan,

(4) See Henning's Statutes at Large, vol. 2, page 425.

Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Pleasants, Gordon, Thompson, and Massie.—49).

So the Committee of the Whole rejected the proposition to base the representation in the House of Delegates, on what is called *the Federal number*, consisting of the free whites, together with three-fifths of the slaves.

The Committee then rose, and the House adjourned.

TUESDAY, NOVEMBER 17, 1820.

The Convention met at eleven o'clock, and was opened with prayer by the Rev. Mr. Taylor of the Baptist Church.

Mr. Mercer moved that when the Convention adjourn, it adjourn to meet to-morrow at ten o'clock, (instead of eleven.) The motion was opposed by Mr. Stanard, and advocated by the mover and Mr. Doddridge: and the question being taken, the House appeared equally divided—Ayes 40, Noes 40. The President giving his casting vote in the affirmative, the motion was carried.

The House then went into Committee of the Whole, Mr. Powell in the Chair.

Mr. Scott, professing his earnest desire to see the Convention come to some compromise of the opposing parties, and believing that object would be promoted by passing over this subject until something should have been determined on the limits of the Right of Suffrage, made a motion to take up the next resolution reported by the Legislative Committee.

Mr. Mercer opposed the motion, and desired that the amendment to the first resolution should first be finally disposed of in the Committee. He referred to other important questions which had been decided by small majorities, and disclaimed on the part of the majority any thing like an uncompromising spirit.

Mr. Doddridge rose to notice a remark of Mr. Scott, on what had fallen from Mr. Johnson. He understood Mr. J. to have stated it as his understanding of the first proposition, in the report of the Legislative Committee, that representation was to be apportioned on the basis of qualified voters; and he had added that he supposed this to have been the intention of the mover of that resolution in the Legislative Committee. Now Mr. D. said, that he had himself been the mover of it, and such an interpretation was certainly very far from his purpose. He had never intended any such thing; nor, so far as he knew, had such an interpretation entered into the mind of the Legislative Committee. His doctrine, and his desire was, that representation should be apportioned according to the entire white population. If this was settled, the next question would be, to whom should the elective franchise be extended? and then a third would present itself, viz: to whom should the Constitution be finally submitted for adoption or rejection? The gentleman had added a word of caution, to so small a majority as to their undertaking to control a minority so numerous. He admitted that the majority here was numerically but little larger than the minority; but if the population which the two portions of the House represented was to be taken into view, it would be found that the difference was far greater. The gentleman had said, that a majority so small ought not to expect to carry all the points it might have in view; but surely, if this was a good argument to a majority, the argument applied with still greater force to those who represented a comparatively small minority of the free citizens of this Commonwealth.

Mr. Scott said, that the gentleman from Loudoun seemed averse to any thing like compromise. The gentleman said, that he did not possess the spirit of divination, and therefore could not tell that the measure which they were pressing would finally succeed.

Mr. Mercer explained. The gentleman from Fauquier had inferred, from his unwillingness to postpone the subject of the basis of representation, that the majority were actuated by an uncompromising spirit.

Mr. Scott said, that he had brought no such charge against the majority. Mr. Mercer then said, that he must have misunderstood him.

Mr. Scott resumed. The gentleman says, that he has not the spirit of divination, and that therefore he cannot know that his measure will succeed; but on that principle, no compromise can ever be effected, because no one can tell whether it will succeed until it is first proposed; and so unless its friends have the spirit of divination, they are not to make the experiment.

The gentleman from Brooke says, that though their majority in this House is small, it represents a large majority of the people of the State. However this may be, I am very sure of one thing: and that is, that the minority in this House represents a large majority of the freeholders of Virginia. There are at least four freeholders East of

the Blue Ridge, to three on the West of it. The proportion of tax-payers, even of the smallest tax, down to a single cent, is nearly the same. There are four thousand two hundred tax-payers East of the Ridge, to three thousand six hundred West of it. So that the minority represented a large majority of those who owned the soil, and bore all the burdens of the Commonwealth.

Mr. Mercer replied. He had certainly understood the gentleman to say, that the experience of the Committee manifested the fact, that the majority was actuated by an uncompromising spirit: and to such a remark, it was certainly pertinent to reply, that he did not know, when he voted for his own proposition, whether it would be accepted or not. The gentleman from Fauquier possessed very different facts, or else proceeded on a very different system of arithmetic from himself; and he averred that the gentleman was totally mistaken in the statement he had made. If the gentleman confined the majority to those beyond the Ridge, he might perhaps be right; but if he added those in the large counties immediately below the Ridge, it would be found, that a large majority of the tax-payers of the State, were represented by a majority on this floor. In support of this statement, Mr. M. referred to two tables exhibiting the number of tax-payers in the counties, and insisted that from those tables, it would appear that the white population West of the Blue Ridge, bore to the white population East of the Ridge, the same proportion, as the tax-payers West, did to the tax-payers East; and that the freeholders of twenty-five acres West of the Ridge, were to those East of the Ridge, in the like proportion. The persons charged with land-tax in the whole State, were 93,000; of these, 39,000 were West of the Ridge, and 53 East. The persons who paid tax on moveable property in the whole State, were 95,000; of whom, 40,000 resided West of the Ridge, and 55,000 East of it. Of the white population, the total number was 600,000; of whom, 250,000 were West of the Ridge, and 350,000 East of it. Here, then, there was little difference between the three ratios. The gentleman from Fauquier had argued on the illusory idea, that the distribution of property was different on the two sides of the Ridge. Such a notion was entirely unfounded, and inconsistent with the actual state of the fact. If the gentleman would add those in favour of a new Constitution, who live below the Ridge, to those who live beyond it, he would find that there was a large majority.

Mr. Stanard said, that if it was regular to receive the statements of the gentlemen on the other side of the House, as going to support one view of a subject, it must be regular to receive statements from the same side, when bearing in an opposite direction. Now, the statements just given by the gentleman from Loudoun, were in hostility with those of his coadjutor from Augusta. The gentleman insisted, that the ratio of freeholders and of tax-payers on the two sides of the Ridge, did not differ from that of the white population. He should confront this assertion, by the statements made by the gentleman from Augusta. According to the gentleman from Augusta, the freeholders from the West, were to those in the East, as thirty-six to fifty-six. According to the gentleman from Loudoun, they were as forty to fifty-three. The gentleman asserted this, in total disregard to a consideration which all knew ought to have great influence on the calculation: that a large proportion of persons charged with land-tax in the West, are non-residents there, and live either in Eastern Virginia, or without the bounds of the State. If due allowance were made for this circumstance, the proportion would not be thirty-six to fifty-six, but thirty-three to fifty-six; or rather thirty-three to fifty-nine, if the three taken from the West were to be added to the East. In Richmond alone, there were more than one hundred persons who owned freeholds to the West of the Ridge. He would now proceed to confront the statement of the gentleman from Loudoun, with that of the gentleman from Augusta.

Mr. Doddridge enquired whether this discussion was in order.

Mr. Stanard contended that it was, as he should not go one word beyond correcting the mistake, the great and extravagant mistake, of the gentleman from Loudoun: and in doing so, he should employ the statements of the gentleman from Augusta, only as a means of giving more force and effect to the correction. The gentleman from Loudoun had affirmed, that the ratio of the white population on the two sides of the Ridge, was nearly the same with that of the tax-payers and land-holders. But what said the tables of the gentleman from Augusta?

Mr. S. after quoting them at large, stated the result to be as follows:

The ratio of white population was fifty-six on the West, to sixty-three on the East: of land-holders, forty-six West to seventy-three East: and of tax-payers, fifty on the West to seventy on the East.

With these statements staring him in the face, the gentleman had told the Committee, without reserve, and without qualification, that the ratios were nearly the same. He had felt it due to the Committee, and to the public, that the assertion should not go uncontrasted with the document.

Mr. Mercer said, in reply, that he owed many obligations to the gentleman from Spottsylvania; but the correction of his facts, was not one of the number. He protested against this mode of collating his remarks with the calculations made by another gentleman. He was responsible for his own statements and his own calculations, and for them alone. The gentleman from Augusta would be the last to require his support. The tables to which the gentleman had referred, went upon the estimated population of 1829. He had already said, that he repudiated those tables, and rejected them as utterly incorrect: he had shown how grossly erroneous they were, in reference to his own district, and he certainly was not bound to abide by tables which he did not admit.

Mr. Stanard replied, that the statements of the gentleman from Augusta, which he had quoted, did not rest on the computations of the Auditor, to which the gentleman from Loudoun now referred. The computation of the Auditor, whether accurate or inaccurate, had nothing to do with the question.

Mr. Mercer replied, that the gentleman's explanation was wholly unanswerable. The tables referred to, were based on some calculation of the white population, as existing in 1829. He rejected these calculations, as uncertain, and adhered to the Census of 1820. According to that Census, the white population West of the Ridge, amounted to 250,000, and that East of the Ridge, to 353,000; that is, they were in the proportion of twenty-five to thirty-five.

Mr. Mercer then referred to the list of county taxes, which went to show, that taxation on the two sides of the Ridge, was in the proportion of forty to fifty-five. Of those who were taxed for freeholds of twenty-five acres and over, 39,110 resided West of the Ridge, and 53,055 resided East of it. He would lay the paper containing these calculations on the Clerk's table, that any gentleman, wishing to examine it, might have an opportunity of doing so. He did not pretend to know where all the persons resided, who were charged with taxes on real estate; nor did he know how many persons residing East of the Ridge, owned land to the West of it; but he had travelled over the State ten times as much as the gentleman from Spottsylvania had ever done, and he claimed to know as much of the condition of its people.

Mr. Fitzhugh recalled the Convention to the motion of Mr. Scott, which he opposed as likely still farther to procrastinate the decision of the Convention on the questions before it: he then proposed, as a measure calculated to bring the House to some result in part, and hasten the disposal of the other questions, that the Committee should rise, and report the first resolution of the Legislative Committee to the House; announcing it to be his intention subsequently to move, that the whole of the residue of the business be turned over to a small Select Committee, to be chosen by the Convention from its most moderate and influential members, who should be charged with the duty of reporting the draft of a Constitution. With this understanding, he moved that the Committee rise.

Mr. Leigh, opposed the object of Mr. Fitzhugh, as likely to lead to a repetition of all the difficulties already felt, and in the end to produce greater delay than the present course.

Mr. Doddridge, concurred in these views, but was in favour of the Committee's rising and reporting the first resolution, that its fate might be decided in Convention. And the subject of representation being thus disposed of, it might serve as a guide to the Convention in the rest of their discussions. He could not fix upon his course as to the Right of Suffrage, till he knew what was to be done as to the basis of representation.

Mr. Leigh, opposed the motion to rise, and wished the Committee to proceed to the question of Suffrage, laying the resolution now under consideration, aside for the present.

Mr. Stanard, took, in substance, the same view, and earnestly opposed the motion for reporting on one resolution in a series of resolutions, all intimately connected: this he contended, to be wholly without precedent in Parliamentary usage. Besides, the sense of the resolution to be reported was not fixed: The gentleman from Augusta, understanding it to apply *only to qualified voters*—the gentleman from Brooke understanding it as referring to *all the white population* whether voters or not.

After some explanation as to the point of order,

Mr. Johnson opposed the rising of the Committee: he thought the two great and leading subjects of Representation and the Right of Suffrage, ought to be considered in connexion with each other. He was therefore in favour of Mr. Scott's proposal, to pass over the first for the present, and to go on till the other should be arrived at in order.

The question was now taken on Mr. Fitzhugh's motion, for the rising of the Committee, and decided in the negative—Ayes 40—Noes 48.

On motion of Mr. Leigh, the Committee then passed by the first resolution reported by the Legislative Committee, (viz. that which refers to the basis of representation,) and took up the second resolution, which is in the following words:

Resolved, That a Census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1831, the year 1845, and thereafter, at least once in every twenty years."

Mr. Doddridge, moved to amend this resolution, by striking out in the third line, all after the word "year," and inserting a clause to make the whole resolution read—

Resolved, That a Census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1835, and at least every ten years thereafter, if the Assembly shall deem the same expedient; and that a new apportionment of representation shall be made after each Census, if the state of the population shall have been so changed as to require it."

Mr. Doddridge explained his reasons for offering the amendment. The State Census, if taken at the periods he proposed, would fall into the intervals of the General Census of the United States, and would correct the inaccuracies of that enumeration; which had, in some cases, been made in a very loose manner.

Mr. Leigh suggested, that though the amendment made it imperative that a Census should be taken, as the basis of representation, it did not require any *assessment* to accompany it. It secured to the West all the benefits of increased representation, but did not require a corresponding increase of taxation.

Mr. Doddridge, requested Mr. Leigh to add a clause to supply this defect: which he declining,

Mr. Mercer, moved to add the clause, "and an assessment thereof made." He insisted that the duty of taking the Census ought not to be left discretionary, but should be made imperative on the Legislature. He dwelt upon the advantage of having the Census taken frequently, and so made as to include a variety of statistical information: the expense would be but small.

After some further conversation between Messrs. Leigh, Doddridge and Mercer, the resolution was amended by striking out the clause which leaves it discretionary with the Legislature; and, after some farther opposition, on the part of Mr. Stanard, the resolution was, at the suggestion of Mr. Cooke, passed over for the present, to give the gentleman from Brooke a better opportunity of digesting his proposition.

The Committee then proceeded to the consideration of the third resolution reported by the Legislative Committee, in the words following:

Resolved, That the Right of Suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution: Provided, that no person shall vote by virtue of his freehold only, unless the same shall be assessed to the value of at least

dollars, for the payment of taxes, if such assessment be required by law: and shall be extended, first, to every free white male citizen of the Commonwealth resident therein, above the age of twenty-one years, who owns, and has possessed for six months, or who has acquired by marriage, descent, or devise, a freehold estate, assessed to the value of not less than dollars for the payment of taxes, if such assessment shall be required by law: second, or who shall own a vested estate in fee, in remainder, or reversion, in land, the assessed value of which shall be dollars: third, or who shall own and have possessed a leasehold estate with the evidence of title recorded, of a term originally not less than five years, and one of which shall be unexpired, of the annual value, or rent of dollars: fourth, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough, or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: Provided, nevertheless, that the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor or marine, in the service of the United States, nor by any person convicted of any infamous offence; nor by citizens born without the Commonwealth, unless they shall have resided therein for five years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough, or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated."

Mr. Leigh, pointed out an effect which he presumed was not seriously intended, but which would arise from the resolution, as it now stood. According to the proviso, no freeholder was allowed to vote unless his freehold was of a certain value (not yet fixed upon;) but, according to a subsequent clause, any house-keeper who has paid "any part of the revenue of the Commonwealth," is allowed to vote. Suppose the value of the freehold be fixed at any given sum, say twenty dollars; and suppose a freeholder owns a house worth nineteen dollars; and suppose, farther, that in that house, there resides a tenant who owns a single horse; the result will be, that the landlord, who owns the house, is forbidden to vote, while the tenant who pays a tax of four cents on his horse, is admitted to the polls. Could it be seriously intended not merely to abolish the freehold qualification, but to make it a *less* qualification than

the payment of the very smallest tax? Taking it for granted, that this could not be the purpose of the resolution,

Mr. Leigh, moved to amend it, so as to make the fourth qualification read, "or who, for twelve months next preceding, has been a house-keeper and head of a family, within the county, city, borough, or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth, to the amount of _____ within the preceding year, and actually paid the same."

Mr. Randolph said, that he rose simply to make a suggestion to the gentleman from Chesterfield, and one to the Committee. I believe, said he, that I shall hardly be contradicted, when I state that the great moving cause, which led to this Convention, has been the regulation of the Right of Suffrage. After all the out-cry that has been raised on this subject, judge my surprise, when I found that a proposition coming from the Legislative Committee, and which extends the Right of Suffrage almost *ad indefinitum*, to many entire classes of persons within the Commonwealth, contained a blow at the elective franchise of the freeholder, the present sovereign of this land. We are met to extend the Right of Suffrage; nobody can tell how far under the out-cry that it is *too much* restricted, and the very first step we take, is to restrict it *still farther*, *quoad* the freeholder. Do gentlemen suppose the freeholders will be blind to this? What becomes of all the considerations of philanthropy of which we have heard so much? What becomes of all the gentlemen's abstractions? Sir, the only good I ever knew these abstractions to do, is to abstract money out of the pockets of one great division of the country, to put it into the pockets of another, a species of abstraction the least of all others to my taste.

Sir, I demand, as a freeholder, in behalf of the freeholders, on what plea you are to put them, and them only, to the ban of this Convention? Other and large classes of persons are selected to be drawn within the range of the elective privilege, while the poorer classes of the freeholders are to be disfranchised. So, after all, this great and illustrious Assembly are met to make war on the poorer classes of the freeholders of the Commonwealth. You are not only to extend rights, but you are to take away the rights, the vested rights, of a large and respectable, however they may be a poor, class of your fellow-citizens. Sir, I will never consent to deprive the freeholder of his rights, however trivial in the view of assessors or patricians, his humble shed may appear. I saw this measure in the Legislative Committee, and I thought I saw, what I think I now see, (here Mr. R. pointed with his finger,) a snake in the grass. I will never consent to be the agent in taking away from any man the Right of Suffrage he now enjoys.

Mr. Mercer observed, that the proviso was not chargeable upon the advocates of the Convention, having been moved in the Legislative Committee by a gentleman, (Mr. Green,) who had always opposed it. Mr. M. explained the object of the mover to have been the prevention of frauds, but thought it unnecessary, as by a subsequent clause, paupers were excluded from the polls; and fraudulent evasions of the Constitution must be left to be remedied by the Legislature.

Mr. Leigh, consented to withdraw the amendment he had offered; but announced his intention to be, after the resolution should have been made as perfect as was in the power of its friends, to move to strike out the whole, and substitute another, which he read in his place, (and which went, in his view, to extend the Right of Suffrage to such tenants, as were in circumstances to vote independently of their landlords.)

Mr. Mercer, moved to strike out the whole proviso, fixing a value to the freehold.

Mr. Green said, the proviso had been introduced at his suggestion. It was a notorious fact, that in the Western part of the State there were bodies of land not worth a cent an acre, which had been taken up by speculators with a prospect of imposing on foreigners, and that in some cases, several different patents had been issued for the same land. If the freehold should be regulated by quantity alone, and no prescribed value be required, it was manifest, that one of these large land-holders would be able to create at will, as many freeholders as he pleased. Practices of that sort had, in some instances, already prevailed, and would, doubtless, again be resorted to. The sole purpose of the proviso, had been to exclude such as were merely nominal freeholders, who paid no taxes, and were entitled to no voice in the Commonwealth. His object had been to lay down such a plain and practical rule as it would be hard to evade by fraud. Gentlemen from that part of the country confirmed the existence of such practices.

Mr. Stanard said he should vote against expunging the proviso. Not because he thought with the gentleman from Charlotte, that it would deprive the poor freeholder of the Right of Suffrage, but for the purpose of guaranteeing and giving security to his right, and with a view to make the general provision operate with some degree of equality. It would make that which was not a real limitation in the Eastern part of the State, to be a real limitation in the Western part of it. No one could cast his eye over the Western part of Virginia, without being satisfied, that the physical condition of the country was such, as put it in the power of any person, at an expense

not exceeding the price of the paper on which a deed could be executed, to qualify himself as a voter; and there were individuals there who could qualify voters by the hundred. The quantity of land on the Assessors' books, bore, in some cases, scarce any relation to the land actually in the county, yet deeds could be given for these imaginary freeholds, which existed no where but on paper, to almost any amount.

The average valuation of all the lands, in some of the counties, was less than five cents an acre, good and bad. Much of it was fit only for lairs for wild beasts. It was not worth one mill per acre. In this situation of things, how would the rule operate on the rights of persons in different parts of the State? The rule gives the Right of Suffrage, not to value, but to quantity. In the West, a certain quantity of land, not worth five cents in all, was sufficient to make a man a voter, while in the East, the smallest quantity of land, communicating the same privilege, was worth from fifty to one hundred dollars. This, surely, was great inequality, and the limitation in the proviso, was all that prevented it. He understood that the mountain land, West of the Ridge, consisted, for the most part of rocks and shrubbery of no conceivable value. No person who visited it, could so much as conjecture, that it ever could become of any value, unless this State should become as full of people as China is, or unless the mountains contained minerals which gave them a value that was concealed from the eye. But, to provide for this possibility, when deeds were made, the title was conveyed with a reservation for any minerals that the soil might contain. He enquired of gentlemen, whether such a state of things was not worthy of consideration, and whether it did not imperiously require, that some amount should be fixed as the value of the freehold. The limitation he would give, would be such as should not only embrace all the poor freeholders now entitled to vote, but should confer that right on many who were now deprived of it. Freeholds of the present size, if situated near a town, were worth more than he would require. The proviso went to extend the basis of representation, yet it confined the Right of Suffrage to a landed qualification, while it excluded freeholders who were merely nominal.

Mr. M'Coy said, that the gentleman last up, appeared to labor under some strange mistake, in relation to the lands and the soil of the West. He underrated, in a surprising manner that portion of the handy works of the great Creator. Between the Blue Ridge and the Ohio, there lay a beautiful and fertile valley, of which the gentleman seemed to have but little knowledge, nor did he seem to be any better acquainted with the mountains than with the vallies of that country. The gentleman had represented the land, as belonging, in great part, to individuals who lived East of the Ridge, and had said that one-tenth part of the whole soil was the property of owners living elsewhere. The gentleman was much mistaken. That country was surveyed in 1795, in large tracts of from fifty to one hundred thousand acres. The number of owners were then not very great. Where the land turned out not to be valuable, the taxes upon it were not paid, and the lands had become forfeited to the Literary Fund of the Commonwealth: The owners, therefore, had it not in their power to make such batches of freeholders as some gentlemen seemed to suppose. Mr. M. said, he happened to live where there was much of this sort of land, and as to what had been represented by the gentleman from Culpeper, (Mr. Green,) as so very common a practice, he had known of but four freeholders having been created in fourteen years, and their votes had been pronounced good for nothing, because the law required six months possession. It was very true that a young man might purchase the right to vote for forty or fifty dollars; but not for five cents, as was supposed, because all the lands not fit for cultivation had been forfeited to the Commonwealth. The gentleman in one breath, had represented the country as being the finest in the world, and had said in the next, that it was not worth one mill an acre. He was astonished at the language of the resolution; he had not come to the Convention to take away the Right of Suffrage from any who possessed it, but to extend it, though in a very limited degree. He should vote to strike out the proviso, so far as taxes went as a rule for extending the Right of Suffrage: a small amount of tax was not the best evidence of an interest in the community, or of attachment to it. A mechanic, born and raised in Virginia, would scorn to go to the mountains to buy the Right of Suffrage. A father having four or five sons, while he gave each of them a plantation, would keep the title in his own hands. Many of the most respectable farmers in Virginia, resided on land that was not yet theirs, but which they expected to get a title for. He would limit the Right of Suffrage to all who now possessed it, and to such heads of families and house-keepers as had had a sufficient residence, from which to infer their attachment to the State. He considered residence, as much better proof of such attachment than the possession of property.

Here he would stop. He would cover all who lived on rented land, all mechanics and mercantile men who lived in rented houses, and there he would stop. He should vote to strike out the proviso.

Mr. Leigh rose, simply to state the reason why he should not vote to strike out the proviso. It was meant, only to get rid of the objection he had stated, and to render the first provision of the resolution consistent with the last. To the last he was ready to accede. He had never yet seen a freeholder who was a pauper, nor had he ever heard that such a freeholder existed in Virginia, until he heard it from the gentleman from Loudoun. But he had seen many house-keepers, and heads of families, who owned nothing but a single horse, with which they were hauling wood that belonged to other people. They resided by courtesy on land they did not own, and who received parish aid. He remembered about thirty or forty such, who lived on both sides of the river. For his part, he did not know what a house-keeper and head of a family was, unless it was a man who lived in a house with a family. He was sorry to see gentlemen so ready to place all persons of this description on a footing with the freeholders.

Mr. Mercer said, that the purpose which the gentleman from Spottsylvania wished to accomplish, could not be attained. Suppose the proviso should be suffered to stand, and the blank it contained should be filled with one dollar. There were thousands of such freeholds near the Kanawha river—or supposing the blank to be filled with fifty cents for fifty acres. The Commissioner would enter fifty acres in his book, of the average value of four cents. There would be no security against fraud in such a provision; but, if fraud was so strongly to be apprehended, the Legislature had ample power to guard against it in any manner that might be necessary.

Mr. Stanard was surprised, that the gentleman from Loudoun should suppose, that a sworn Commissioner would put down land in his book at any rate the owner might desire. Such a means of evading the law did not apply to the case. The persons who appear as the owners of freeholds, were often but the transient population of the day, who are provided with a freehold for the occasion, and who would be succeeded by a new swarm, whenever the sinister purposes of a canvasser should require it. He desired to enquire of the gentleman from Kanawha (Mr. Summers) whether such practices did not exist, and whether the known facility, with which votes might thus be obtained, had not in practice, throughout a large extent of the Western country, broken down all limitations to the Right of Suffrage? And such being the case, whether all enquiry into the right of a voter to vote, must not be made at the hazard of losing the election. He hoped the proviso would remain, and that the blank be filled with twenty-five dollars. He would take the minimum of the gentleman from Loudoun. He should prefer fifty dollars but would be content with twenty-five.

Mr. Mercer said, that it was painful to him to be obliged again to trouble the Committee, but when a gentleman questioned the facts he stated, it was necessary for him to protect himself. None could change the value at which land was assessed, but this was only law, it was not the Constitution. Every owner had a right to have his land assessed. If he had a tract worth \$20,000 and should sell part of the land, he could not be made to pay on the residue, an average of the whole. Mr. M. insisted, that a man who bought land should be charged with a tax only on its value. If he bought a freehold of twenty-five acres, and should pay tax at the rate of two cents, that would cover the sum in the blank.

Mr. Stanard reminded the gentleman that the assessment was made by a sworn officer.

Mr. Wilson of Monongalia enquired of the Chair, whether it would be in order to offer a substitute for the proviso.

The Chair replied, that he must know first what the amendment was, and then he should be able to decide whether it could be admitted as an amendment to the amendment now pending.

Mr. Wilson thereupon read his resolution.

Resolved, That every free white male citizen of this Commonwealth, of the age of twenty-one years, and upwards, who shall have resided in the State two years, and in the county where he proposes to vote, one year, next preceding the time of offering such vote; who shall have been enrolled in the militia, if subject to military duty; and who shall have paid all levies and taxes assessed upon him, or his property, for the year preceding that in which he offers to vote, shall have a right to vote for members of the General Assembly: *Provided*, That no person shall be permitted to exercise the Right of Suffrage, who is a pauper; who is of unsound mind; who has been convicted of any infamous crime; or who is engaged in the land or naval service of the United States; and the Legislature shall prescribe the mode of trying and determining disputes, concerning the said qualifications of voters, whenever the right of a person to vote shall be questioned."

The Chair pronounced the resolution to be in order.

After some discussion on the point of order,

Mr. Wilson concluded to withdraw his amendment for the present.

Mr. Summers said, the reference of the gentleman from Spottsylvania, (Mr. Stanard) required from him some explanation, and in giving it, he begged to be permitted

to remark, that he was not disposed to make war either upon the *small* or the *large* freeholder. He not only wished to preserve the Right of Suffrage to all who now enjoy it, but to extend it to large classes who are now deprived of this important right.

The imputation of frauds upon the election laws, general and notorious in the Western district, is, he imagined, the result of misrepresentation or misapprehension. Called upon by this charge for its verification or denial, he had subjected his memory to a rigid scrutiny, without being able to recollect a single instance of a fraud of this character, within his own observation. He then appealed to the rumors of the country, which furnished but a single instance, and that in a period of great party excitement, of an attempt to increase the number of electors by deeds made expressly with that view; the extraordinary number of the grantees gave notoriety to the attempt, and may have induced the gentleman from Spottsylvania to suppose that such occurrences were common. Not so, Sir. He owed it to that quarter of the State, to assure the Committee, from information entitled to his full confidence, that many, very many of those intended to be made voters by this deed, refused to exercise the right on a ground so objectionable; and that the commissioners appointed to hold a very important election in which their political character had been consulted in their appointment, resisting all party consideration, decided with great firmness, and unanimity against this fraudulent attempt to increase the freehold list, and to the entire satisfaction of the country.

He did not mean to be understood as affirming that no other abuses of our election laws have taken place. He thought it probable that occurrences of this sort happen occasionally, both in the East and in the West, but not more frequently in the latter than in the former.

To him, the limitation of the freehold right by the value of the land, was very objectionable. It adds to the misfortunes which are inseparable from the cultivation of poor land, the serious evil of political disfranchisement; and aggravates the misfortune in no slight degree. The *minimum* value proposed by the gentleman from Spottsylvania, lessens, but does not remove the objection—the average value of the land of the Western district, by the assessment of 1817, is ninety-two cents per acre, and to require a freehold of twenty-five dollars value, will be to require more than twenty-five acres of the average land of the country, to constitute a voter. His views of political equality and justice will extend the same rights to the humblest cottage of the mountain side, which are enjoyed by the most splendid mansions of the wealthy. Permanent common interest, however small, ought, in his humble judgment, to be invested with the rights of protection, and placed on a level in the political institutions of the country, with the most elevated ranks of society.

Mr. McCoy said, that most of these masses of unproductive lands, which had not paid the taxes, were forfeited to the Literary Fund, and thus could not be cut up. He went into his own views of the Right of Suffrage, stating that in his country there were a great many lease-holders, who had not deeds from their fathers, perhaps, and who ought to have the Right of Suffrage. There were also many mechanics who were heads of families, and deserved to have the right. He said, he was perfectly willing to give the Right of Suffrage to all those who had it at present, and to heads of families, and house-keepers. This was his idea of the limitation of Suffrage.

The question was then put on striking out the proviso, and decided in the affirmative.—Ayes 62.

So the provision which went to restrict the right of freehold election to freeholds of a certain value, to be fixed in the Constitution, was stricken out of the resolution reported by the Legislative Committee.

The Committee then rose, and on motion of Mr. Leigh of Chesterfield, the Convention adjourned.

WEDNESDAY, NOVEMBER 18, 1829.

The Convention met at 10 o'clock, and was opened with prayer by the Rev. Mr. Taylor of the Baptist Church.

Mr. Massie of Nelson, presented the following memorial from the citizens of that county, which, on his motion, was referred to the Committee of the Whole on the Constitution:

To the Convention of Virginia:

Your memorialists beg leave to represent to your honorable body, that it was with deep concern they received the intelligence, that a proposition to make a change in the mode of appointing Magistrates, was rejected by the Judicial Committee. Your

memorialists do consider the present mode of those appointments to be aristocratic in its features, and tending to the establishment of a privileged order in this Commonwealth: that a body should be established in this Commonwealth, with self-creating powers, appears to them an anomaly of most alarming tendency, and in practice, well calculated to dethrone the supremacy of the people's will. It must be known to your honorable body, as it is known to your memorialists, that the present mode of appointing those officers, is well calculated to place the Judicial powers of the country, as well as the destinies and well-being of the counties, into the hands of a few families. It is known, that the County Courts have been invested, in this State, with the extraordinary powers of appointing militia officers—of supplying vacancies in their own body—of the appointment of overseers of the poor—of establishing and changing roads—of levying county taxes at their own discretion—and of managing the whole county police, according to their own will and pleasure, without consulting the supreme will of the people; their powers are great, and often improperly exercised, because the Courts are in no way responsible to the people; in fact, they are a power without responsibility. Your memorialists have thought proper to make this very brief statement, in order to call the attention of your honorable body, particularly to this subject. They, therefore, pray that some mode may be adopted by you, which will take away a self-creating power from the County Courts—and they will ever pray, &c.

(Here follow the signatures.)

The House then went into Committee of the Whole, Mr. Powell in the Chair:

And the question still being on the third resolution of the Legislative Committee, (which relates to the Right of Suffrage—see proceedings of yesterday,)

Mr. Wilson of Monongalia, offered the following amendment, by way of substitute for that of the Legislative Committee:

“Resolved, That every free white male citizen of this Commonwealth, of the age of twenty-one years, and upwards, who shall have resided in this State two years, and in the county where he proposes to vote, one year, next preceding the time of offering such vote; who shall have been enrolled in the militia, if subject to military duty; and who shall have paid all levies and taxes assessed upon him, or his property, for the year preceding that in which he offers to vote, shall have a right to vote for members of the General Assembly: Provided, That no person shall be permitted to exercise the Right of Suffrage, who is a pauper; who is of unsound mind; who has been convicted of any infamous crime; or who is engaged in the land or naval service of the United States; and the Legislature shall prescribe the mode of trying and determining disputes, concerning the said qualifications of voters, whenever the right of a person to vote shall be questioned.”

Mr. WILSON addressed the Committee as follows:

Mr. Chairman,—As there can be no difference of opinion about the propriety of my presenting at this time, the resolution which I offered yesterday, but subsequently withdrew, I now submit to the consideration of the Committee the following substitute for the third resolution of the Legislative Committee. (Here Mr. W. read his proposed resolution on the subject of the Right of Suffrage, which being reported by the Chair, he resumed, in substance, as follows:)

It must be evident, Sir, from the various objections which on yesterday came from every quarter, to the resolution of the Legislative Committee, that it meets the views of a very small portion of the members of this Convention. I have, therefore, thought it proper to rid the Committee at once, of the labour and trouble of innumerable amendments and modifications of that resolution, by placing before it the subject of the Right of Suffrage on its broadest ground. I wish to march boldly up to the question and meet it at once, and present it in such a shape that there will be no room for the imputation of ambiguity or insincerity. The substitute I propose is short, plain, simple, and easy to be understood. This proposition, at least, is not liable to the imputation uttered yesterday by the gentleman from Charlotte, (Mr. Randolph,) of being “a snake in the grass.”

The scheme here proposed for the regulation of the Right of Suffrage, is not open to the objection raised yesterday, by the gentleman from Chesterfield, (Mr. Leigh,) to the resolution of the Legislative Committee. It does not exclude from the polls the owners of small freeholds, whilst it admits the payer of a four cent horse-tax, who, although he might even be a lease-holder under one of those small freeholds, yet would be entitled to a vote, whilst his landlord is excluded. The substitute includes both these classes. Nor is it open to the objection of the gentleman from Charlotte, (Mr. Randolph.) It aims no fatal blow at the rights of the freeholders, for it includes them all. Nor is it liable to the objections raised by the gentleman from Spotsylvania, (Mr. Stanard,) yesterday, against the resolution for which it is intended to be a substitute. He dwelt strongly and truly on the difficulties attending any attempt to estimate the value of a man's property per annum, for the pur-

pose of measuring his right to vote. The plan now proposed, looks not to property as the test of a man's attachment to the community, and, therefore, avoids the difficulties which must ever attend any scheme of property qualification. It seems to be admitted, that the arbitrary limitation of the Right of Suffrage to the ownership of any fixed number of acres of land, is absurd and unjust, because of the inequality of the value of land. It is, therefore, proposed, that the property of the citizen, either real or personal, or both, shall be valued, and his right to vote be tested by that value. This scheme would indeed be liable to great objection, arising out of the difficulty of carrying it into execution, and the fraud or negligence of the valuers.

Two qualifications seemed to be required by the sixth section of the Bill of Rights, in every person, before he shall be entitled to the Right of Suffrage. And, notwithstanding the lacerations which this venerable instrument has undergone, in the course of our past debates, I still feel disposed to take my text from it, whenever I am about to discourse upon political subjects, and matters of Government.

The first qualification required by that instrument is, that the man shall furnish sufficient evidence of permanent, common interest with the community—and secondly, that he shall furnish sufficient evidence of attachment to the community. In other words, we should be convinced that his interests and his affections, bind him to us, before we admit him to any share in the government of our State. The question then arises, by what means can we ascertain where his interests and attachments are centred? What test shall we apply? What requisites shall we demand, without which, the man shall be excluded from the exercise of this, the most honorable and precious of his natural rights? And, here, Sir, permit me to observe, that, notwithstanding all the ridicule which has been cast upon the natural rights of man, by certain gentlemen; notwithstanding the repeated denial of their existence, except in the brains of moon-struck reformers, I still believe, that Nature, or Nature's God rather, has conferred certain original rights upon man; and among these, none appears to me more clear and undeniable, than the right of appointing our own agents. And this right may exist apart from, and anterior to, any regular, social compact. The fact of my having authorised a certain individual to transact a piece of business for me, does not necessarily imply any social compact with him, or any other individual of my race. But, although this right of appointing our agents exists in man by nature, yet, when he enters into society, that right becomes limited, and ought to be controuled, by a due regard to the interests of that society, or if the gentlemen please—by expediency. Private and individual expediency must yield to the good of the whole. We must give up a portion of our natural liberty, in order to enjoy the advantages of social union, and be secured in the undisturbed enjoyment of those rights which are not surrendered, and which the necessity of the case does not require us to surrender.

But, Sir, this surrender should not be required to an extent greater than is necessary and expedient for the good of the whole community. If you require the citizen to yield up to the Government a larger portion of his natural independence and free agency, than is necessary for the security of the community at large, and its members, in particular, then, Sir, you take from him that, for which you render him no equivalent. The moment you say to the citizen, yield to the Government *more* of your natural liberty than is requisite for the security of the community, you pass out of the field of freedom, and enter upon the domains of tyranny. This, I conceive, to be the true rule. And the application of it will produce very different results, according to the virtue, intelligence, and patriotism of the people, to whom it is applied. When applied to the corrupt and ignorant Italian, the result will be absolute monarchy. When applied to the more virtuous and enlightened inhabitants of England, the result will be, a limited monarchy. When applied to the intelligent, virtuous and patriotic people of Virginia, the result will be a free representative Republic, wherein the administrators of public affairs are the agents of the people, and chosen by those of the people, who have, or are supposed to have, a free will, a matured intellect, and an interest in, and attachment to, the community. With regard to freedom of will, and maturity of intellect, I have only to observe, that if gentlemen do not already perceive the propriety of excluding women, children, paupers, idiots, and slaves, from the polls, vain will be any attempt, on my part, to convince them of it. The beams of the noon-day sun will be useless to him, who wilfully shuts his eyes against the light.

But, I recur to the question, what is the proper test of a man's interest in, and attachment to, the community? It is answered, that property, and especially landed property, is the only true and safe test. To this I cannot assent. It assumes, that a man cannot love a country, or take an interest in its good government, unless he owns a portion of its soil. It is not my intention here, to enter into a detailed history of the rise and progress of the freehold Right of Suffrage. That duty has been ably and eloquently performed by my friend from Frederick, (Mr. Cooke.) He has shown,

that it originated in despotism. It is my business to show, that it is absurd and unjust in its nature.

It is said, that the possession of property is the only test. Now, Sir, if the security of property were the only object of Government, there might be some truth in this assertion. But, when we know, that the object of all good Government, is to protect the citizen in the enjoyment, not only of his property, but also of his life, his personal liberty, his limbs, his character, the freedom of speech and action, and the pursuit of happiness; and that these are all objects of equal, and some of them, of higher importance than property, we see, at once, the fallacy of the test. In all these, the rich and the poor, stand on a level—they are all equally valuable to both—or, rather, the poor are *more* interested in the security of these rights, because the enjoyment of them furnishes to the poor man his only defence, against the overweening influence and power, which wealth confers upon the rich, and which we know, are too often tyrannically exercised. Besides this, however poor a man may be, unless he be an absolute pauper, (and paupers are excluded,) he yet possesses *some* property; and, Sir, the poor man's pittance is just as dear to him, as the rich man's treasure, because it is his all; aye, and more dear to him, because it is but a pittance, and, therefore, more liable to be exhausted. Supposing, therefore, that the rich and the poor have equal virtue, (and this I imagine will not be denied,) the poor man must, and does take as great an interest in the good government of the country, as the rich man.

The truth is, that permanent residence is the best evidence of attachment to the community, and an interest in its welfare. The value of land is too fluctuating, and its tenure too uncertain, to furnish this evidence. It may be said, that if a man loses his land, and it passes into other hands, that other persons will possess this evidence, and will be entitled to the vote, and so on through every mutation of property; but from this it would seem, that the Right of Suffrage is in the land, and not in the people! Suppose a virtuous and intelligent man to-day possessed of a farm upon which he resides with his wife and children, surrounded by a large circle of beloved friends and relatives. Every body will say, he is entitled to the Right of Suffrage. Well, suppose that by one of those sudden reverses of fortune, which in the uncertainty of human affairs, are continually occurring, he should be deprived of his farm the next day; is he to be deprived of the Right of Suffrage? He is yet virtuous, intelligent, patriotic—he has yet in this State his residence, his family, his friends, his all that is left him. Do you suppose that his attachment to his native State, and his interest in its welfare, is less now than before? Certainly not. Being now deprived of the all-commanding influence of wealth, he is still more concerned in the procurement of equal and just laws, by which he, and all that is near and dear to him, shall be protected from oppression.

Do you measure a man's right to vote by the *value* of his landed property? How uncertain and unjust a test will this also be, of a man's attachment and interest! Will you say that he shall own real estate of the value of twenty-five dollars, as was suggested by one gentleman? Surely, we all know that a piece of land which this year may be worth twenty-five dollars, may, by some of those causes which are producing continual changes in the value of land and its produce, be next year reduced far below that value. And yet you will next year deprive the owner of his vote, although he owns precisely the same land, which this year conferred upon him the Right of Suffrage. If you don't do this, you abandon your principle of regulating the elective franchise according to the value of a man's landed property. And if you do this, a man may always hold the same tract of land; the same portion of the soil, and yet have, or not have the right to vote according to the variations of the price of his land and its produce!

Upon your own principles, Sir, this standard is unjust. You propose to measure a man's right to vote, by the value of his land, and in the same breath you give to a man owning twenty-five dollars worth of land, one vote, and to the man owning twenty-five thousand dollars worth of land, *no more* than one vote! Is this just on your own plan? But, it may be replied, that though the disparity of fortune is great, yet the interest is the same; that though there is not an equality of interest, yet each has an *interest* in the welfare of the State. If this be so, then you do not measure a man's right to vote by the quantum of his interest; the existence of an *interest* is sufficient. Agreed then—he who has no property in the State, but resides here, has his family here, and is here pursuing some business to procure a livelihood, is interested in the good government of the community. A man may own twenty-five dollars worth of property in this State, and yet care little or nothing about its general interests. Yet, a man who has not property valued at twenty-five dollars, but who has all his relatives, friends, and *associates* in the country—all his affections concentrated in its welfare, would be deprived of his vote, and it would be given to the other, who happens to own as much property as amounts to twenty-five dollars in value. Such is the result of your real property qualification.

If we advert to moveable property as the basis of the Right of Suffrage, it will be evident at first sight, that the same objections apply to it with accumulated force ; for we all know, that personal property is, if possible, more uncertain in its tenure, and subject to greater and more frequent mutations in its value, than landed estate. In fact, whenever you attempt to prescribe such a standard, you will always find it imperfect. I admit that no *perfect* rule can be prescribed on the subject : but I confess, I think that general rule too imperfect for practical application, the exceptions to which, are more numerous than the cases which it includes. There can be no *perfect* standard : but I think at the same time, that there can be none found more worthy of adoption, than residence, bearing arms, and paying taxes. The possession of property furnishes not an exclusive, but a probable evidence of attachment to the community ; and my proposition includes all the possessors of property who reside here, and I presume, gentlemen do not intend, to permit non-residents to vote, because they may own a tract of land here. But, some period of residence must be fixed. It will not do to let every bird of passage that flits through our State, enjoy the Right of Suffrage. What shall that term of residence be ? Gentlemen may differ in opinion on this subject ; but it appears to me, that a residence in the State, of two years duration, does furnish sufficient evidence of a man's present intention to continue a resident of the State, so far as outward acts can furnish such evidence. If gentlemen think this too short a period, let them amend the resolution by inserting three, or four or five years residence, or any other term, provided they do not consume too much of the man's life in ascertaining his intention to spend his life amongst us ; and thus deprive him of the right of voting, during a considerable portion of his earthly existence, in order to ascertain that he will exercise that right wisely, during the remnant of his mortal career. All I think necessary in this case, is, that we should be satisfied of his present intention to reside with us, that he has cast in his lot with us ; and for this, I deem two years residence in the State, and one in the county, sufficient. When you have a man's person here, you will, in general, have his property also ; and this, together with every thing dear to him, will bind him to the country, and deeply interest him in its welfare. Let me put a case, Mr. Chairman, by way of illustration. Suppose two men embarked on board a ship, the one, carrying with him merchandize to the value of ten thousand dollars, and the other goes aboard with nothing but his wearing apparel. They launch into the ocean. Storms soon succeed to fair weather. The billows threaten to swallow up the ship with its cargoes and crew. I ask you, Sir, whether the poor man in this hour of peril, will not feel himself as much interested in the preservation of the ship, as the rich merchant. It is true, he has not the same pecuniary interest at stake, but his life, and his present all, is at stake ; and he will enter into every scheme and make every exertion for the salvation of the ship and its contents, with as much ardour, energy, and passion, as the owner of thousands. How is it possible, that the interest of the poor sailor in such case, can be less than that of the wealthy trader ? The one has his all embarked—the other has no more.

It seems to be generally admitted, Sir, that men are as much influenced by hope and expectation, as by actual fruition. Anticipation is said, and perhaps truly, to be superior to enjoyment. If so, the man who comes into this State poor, but with the hope and expectation, that by the pursuit of some profession or avocation, learned or unlearned, he shall support his family, and acquire a fortune ; while engaged in this pursuit, he has, in my opinion, an attachment to, and an interest in this community, which should entitle him to the Right of Suffrage. Although he has no property, yet he expects to gain it. He would, therefore, have a strong motive to promote the good government of the State ; and this arising from an interest, and an attachment, as strong as that of the owner of property. He would be anxious to have a protection for whatever property he might acquire ; and this he would know, he could only have, under a good government and equal laws.

But, Mr. Chairman, not only does the present limitation of the Right of Suffrage prevent the increase of population by migration from other States, but it drives from the bosom of the Ancient Dominion, many of her most valuable sons. It may not be known to the gentlemen of the East, but it is a fact well known to those from the Western part of this State, that many valuable citizens have left their native State, and availing themselves of the facility of emigration, presented by that great river which washes the greater part of our Western border, have departed to those splendid regions of the West, where, in addition to the exuberant fertility of the soil, and other physical advantages, they can enjoy the rights of freemen. Yes, Sir, your Government banishes vast numbers of our young men to the Western States, where this odious restriction does not exist. Those States, in general, require little more than residence, as evidence of attachment and interest, so as to entitle persons to the Right of Suffrage. The consequence is, that many of our citizens, virtuous, intelligent, industrious men, forego all their attachments to their native soil, their house, and the scenes of their youthful sports, and pass away into some of those Western

States, where they can enjoy the privileges appertaining to freemen, by right of nature, not by purchase. Although a freehold may be cheaply bought, they disdain to purchase that which is of right their own.

Sir, there is a continual, and an exterminating warfare, carried on throughout this wide extended Commonwealth. She bleeds at every pore. And who are the parties to this desolating war? It is the Government against the people. A most unnatural war! Every member of the community driven out from us, by the operation of an unjust Constitution, is as much lost to us, as if the bayonet or cannon ball, had done its work upon him. Yes, Sir, it is a cruel and exterminating war. I speak of Western Virginia, when I say, that if the State were called upon to furnish annually her quota of troops to aid the General Government in resisting the attack of all Europe combined, it would not consume our strength, nor retard our population more, than do the restrictions imposed by her laws upon the Right of Suffrage. Many a soldier goes to the battle-field and returns again to his home with its comforts and endearments: but the voluntary exile; he, who is compelled for conscience sake, to rend asunder all the ties which bind him to his native country, and like the pilgrim fathers of New-England, seek liberty in a distant land, never returns. Sir, I have known respectable, intelligent, virtuous men; men who had been honoured with seats on the benches of our County Courts; to whom their fellow-citizens cheerfully confided the protection of their rights of property, and their personal rights, who were regarded as the efficient guardians of the public peace and welfare; I have known such, Sir, prohibited by your laws from exercising the Right of Suffrage. Is there not something wrong in all this? I have seen the respectable young men of the country—the mechanic, the merchant, the farmer, of mature age, of intelligence superior to that of one half the freeholders, and glowing with a patriotism which would make them laugh at death in defence of their country: I have seen such commanded to stand back from the polls, to give way to the owner of a petty freehold, who presses forward, saying to him in effect, “Away! I am holier than thou—this is sacred ground, upon which you have no right to tread.” Ought such things to be? Is it for the good of our country that such things should be? Surely not.

Mr. Chairman, I shall not extend my remarks any farther. It was not my intention to enter into a detailed enumeration of all the evils of the present system of Suffrage, or of the advantages of that which I have now the honour to submit to the Committee. My present remarks were only intended to call the attention of the Committee to the plan I have proposed. It is a broad one I admit. I submit this project to gentlemen, as a base upon which they may build their schemes of Suffrage. It is open to amendment, and I have no doubt, requires amendment. Such as it is, I submit my substitute to your consideration.

Mr. Henderson of Loudoun, moved to amend the amendment of Mr. Wilson, by striking out the words “who is engaged in the land or naval service of the United States,” and inserting in lieu thereof the following: “Who shall be a non-commissioned officer or private soldier, seaman or marine in the regular service of the United States, or of this Commonwealth.” And stated his reason for it to be, that he did not wish to exclude gallant officers, such as Thomas ap Catesby Jones in the naval, or Roger Jones in the land service, (both from his own district,) from the Right of Suffrage; nor would he exclude the subalterns, and soldiers, &c. could he believe them capable of an independent exercise of the Right of Suffrage.

In reply to an enquiry of Mr. Claytor, Mr. Henderson said it was his intention to include the militia as well when in as out of actual service.

Mr. Wilson having accepted this amendment as a modification of his own,

Mr. HENDERSON addressed the Committee in support of the substitute of Mr. Wilson as amended. He expressed the gratification he had felt on account of the manner in which the interesting question, recently under the consideration of the Committee, had been debated by the gentleman from Northampton, (Mr. Upshur,) and the gentleman from Hanover, (Mr. Morris.) He remarked, that he felt pride in making the tribute of his acknowledgments to these gentlemen, distinguished alike for their ability and eloquence, and for their courteous treatment of those who, with himself, differed from them in opinion. He intimated an earnest wish, that the same temper might mark the debate about to obtain upon the great subject now before the body.

Mr. H. said, before I proceed, Mr. Chairman, to trouble the Committee upon the merits of the question under consideration, I will briefly advert to the origin and history of the freehold Suffrage in Virginia. It is now, Sir, two hundred and ten years since the assemblage of the first House of Burgesses. From 1619, when it met, till 1677, a period of fifty-eight years, the Suffrage, with the exception of a single year, was exercised by all the *freemen* of the Colony. During the excepted year, it was limited to *house-keepers*. In the year 1677, after the death of the gallant Bacon, the *freehold* Suffrage was first introduced, not by any Act of the Legislature, of the English Parliament, or of the people of either country. It was the offspring of regal interposition entirely, as has been most aptly and forcibly shown by my

friend from Frederick, (Mr. Cooke.) Yes, Sir, said Mr. H. it was the precious fruit of despotism. Charles II. one of the most odious and profligate tyrants who ever wielded the British sceptre, transmitted to Sir William Berkeley, then Governor of the Colony, an instruction, signed by his own royal hand, commanding him to permit none except *freeholders*, to exercise this inestimable privilege. It is curious to observe the refined spirit of tyranny which reigns throughout this document. It commands Sir William not to permit the House of Burgesses to meet more than *once in two years*; to limit its sessions to *fourteen days*, and to *reduce* the moderate recompence for their services, which the freemen of the Colony had cheerfully accorded to their representatives. It is obvious, Sir, that the policy and aim of this disgusting edict was to dishearten the people; to degrade their agents; to make a mockery of their legislation. A fortnight for the whole business of a new and rising Colony, by agents who were to be humbled by subsisting upon "*low and coarse diet*!" I ask, Mr. Chairman, if, in the face of these striking and graphic facts, gentlemen can cover with the hoary mantle of antiquity, the monopoly which I assail? If an abuse founded in a flagitious and scornful disregard of all decency and right, and fastened, at the point of the bayonet, upon an indignant people, can challenge to itself the favourable notice of the freemen of Virginia, in the nineteenth century? Having thus, continued Mr. H. stripped the argument of our opponents of the interest which it claims from the pretended *revolutionary* origin of this usurpation, I respectfully invite the Committee to follow me in the imperfect effort which I shall make to discuss it on its merits. I lay down these principles as applicable to the subject. I deem them clear as day; postulates in the science of politics: First, that *all the men of a society are entitled to a voice in framing its organic law*; secondly, that a *majority* of these men has an undoubted right to decide what that law shall be; thirdly, that as a corollary from the second proposition, this majority has a legitimate authority to prescribe *who shall exercise the Right of Suffrage in the ordinary legislation of the society*; and, fourthly, that to withhold the exercise of this right from any man in the society, *except where it is necessary for the common good*, is unjust and tyrannical. I do not think, said Mr. H. that the truth of these principles, or either of them, will be denied in the United States, *save only in Virginia*. Let us proceed to apply them to the subject of the present debate. I assume, that there are in the State of Virginia 100,000 men having attained the age of twenty-one years, either natives of the State, or having resided therein for a reasonable time, and who are willing to pay, rateably with their fellow-citizens, its taxes in peace, and to fight, by their sides, in war. The real number is no doubt greater. I assume it for convenience. I farther assume, that, of the 100,000, 40,000 are freeholders, and 60,000 non-freeholders. This exposition of the subject shows at once its importance. Yes, Sir, on the one hand, you have the political power; the political life and death of three-fifths of the freemen of the Commonwealth; on the other, the order and stability of the Commonwealth itself. I am deeply sensible of my inability to do justice to such a theme. But, impelled by a sense of duty to my constituents, whose memorial I have had the honor to present, and by a sacred regard to the great principles involved in the issues of our deliberations, I will endeavor to prove that neither the lights of history, the results of comparison, nor the inductions of reason, demand, at our hands, the tremendous sacrifices which gentlemen desire us to make.

The history of ancient times, Sir, continued Mr. H. will give us very little aid in the development of this subject, as has been justly observed by my venerable colleague, (Mr. Monroe.) No gentleman will point us to any nation of antiquity except the Grecian and Roman Republics. There man attained to greater excellence in arts, in literature, and in arms, than under institutions less free. Greece, the mention of whose name awakens so many classic associations, and the memory of whose recent woes makes the heart bleed with sympathy, can afford us no material aid. The subtle, but versatile Athenian, eagerly catching the strains of that eloquence, the charm of succeeding ages, and deciding by acclamation, *in proper person*, great questions of public concern, is no example for us. Rome laid the foundations of her power in violence, and completed it by incessant war. Her victorious Generals, laden with the spoils of conquered nations, and dragging at their chariot-wheels the Kings of the earth, afford a poor illustration of the principles of representative Government. And the American turns with disgust, from a half-civilized people, who sported in the groans of the gladiator weltering in his blood, while he bent his sinking eye towards his native hills.

The able and eloquent gentleman from Chesterfield, (Mr. Leigh.) referred us the other day, in the discussion of a kindred topic, to France and England. We were counselled by that gentleman, to take warning from the French Revolution; and the Government of England was extolled as resting on liberty and law. Law, Sir, is to be found every where. No country in Europe exhibits the disgraceful picture of property insecure. The spirit of the age forbids it. The revolutionary horrors of France were set before us in bold relief; and we are earnestly premonished not to act

them over again. Let us follow out this parallel. The Kings, Nobles and Priests of France, for a succession of ages, governed the people by an oppression so intolerable, that they rose at length, in their strength, and shook off their detested tyrants as the lion does the dew-drops from his mane. Grief and rage, drove them to excesses revolting to humanity. Now, Sir, what is this but social confusion and misery, produced by the injustice and cruelty of the aristocrats of France? Had they been just and moderate, these horrors would never have occurred. We seek to confer upon the body of the people their rights; and we are gravely, and most pathetically urged not to do it, because the tyranny of the *few* in France, and the suffering of the *many* led to social convulsion. That is, as I take it, opposite causes, produce like effects; or do not relieve the people of Virginia, because the oppression of those of France led to blood-shed. To this logic, I cannot subscribe. And, after all, what is now the situation of that beautiful country? A representation of the people; the establishment of the trial by jury; a free press, and a vastly more equal division of property, proclaim that with great temporary evil, much lasting good has flowed from the revolution. The Jesuit no longer tramples on the man. Happy change for this gallant people! Let not the brilliant and ravishing description which Burke gives us of the unfortunate Marie Antoinette, beguile us into the belief that any argument against our principles can be founded on the story of her sorrows, or of those of her country. For England, said Mr. H. I have great respect. She is crowned with too much glory not to awaken our admiration; and has too much in common with us, not to attract our sympathies. But is England, in truth, a land of liberty? Are the people happy? Is her Government a fit model for our imitation? Do not those who wield the power of the country, the *privileged few*, lavish its resources with wanton prodigality, while about two millions of the people are on the poor lists, and as many more, on the confines of pauperism, eke out a bare subsistence by a degree of toil which makes life itself a burden? A single ecclesiastical character in Ireland receives annually, and chiefly, too, from those who differ with him in religious belief, more than five times as much as the salary of the President of the United States, while hundreds of thousands of the people are huddled, like beasts, into mud-huts, half naked, and subsisting on potatoes, often, too often, scantily supplied! A man dares not in England, unless he is worth £100 a year, shoot a hare on his own land. Yet England, renowned and dreaded, has power beyond any nation over which the sun holds his course; a glory which Princes and Potentates may envy. But this power belongs to the few; this glory is the property of her leaders; and she owes a debt of four thousand five hundred millions of dollars. From such a union of wretchedness and splendour, of injustice and oppression, Heaven preserve the land of my nativity!

Let us, said Mr. H. turn our eyes towards our own country. Of the twenty-four States that form our Federal Family, Virginia alone has the freehold Suffrage throughout. In North Carolina, *freeholders* alone vote for Senators; but, as if to atone for this political sin, she permits *free negroes* to vote for members of the "House of Commons." In New-York, also, there is a singular anomaly; for the *free negro* there, is the only man of whom the freehold qualification is required. Every other citizen, without pecuniary qualification, is allowed to exercise this privilege, so dear to freemen. The effect is, that, of twenty-four States spread over the wide bosom of our happy country, Virginia, and *Virginia alone*, proscribes and brands, with utter political opprobrium, the *far greater part of her sons*. In Massachusetts, New-Jersey and Connecticut, a moderate pecuniary qualification is demanded; and in South Carolina, a tax of three shillings is required. In the other nineteen States, no pecuniary qualification is established, although some two-thirds of them impose as a prerequisite to the exercise of Suffrage, the payment of such taxes as may be assessed. I appeal to the members of this Committee; to the American world, if property is not as safe, and social order as effectually sustained, in the other States in this Union, as in Virginia? Look to South Carolina, to Louisiana, every where around you. Ask Ohio, the daughter of yesterday, now an empire in herself, if property is safe within her confines? If social order be not inviolate? Her population, I mean, Mr. Chairman, her white population, is now greater than that of the renowned and *once powerful* Commonwealth of Virginia.

After all, Sir, what is required of the voter? Simply the capacity and the will to choose good public agents. The gentleman from Chesterfield, before alluded to, in treating by anticipation, the question now under debate, denied that men who labored were able to perform this duty; and intimated, that even he, acute and accomplished as he is, was so engrossed with professional pursuits, as not to leave him leisure for the study of political science. Surely the same remark would apply to the other classes of society; for, by the fiat of an overruling Providence, we are doomed to earn our bread by toiling in our several vocations. Shall we cast the Government, then, into the hands of the idle and worthless? Heaven forbid! But, it does not require, in order to the proper exercise of the Right of Suffrage, that the citizen be a master

of political science. Were it otherwise, how many voters would you have? Sir, the "*peasantry*" are competent to the performance of this duty. All who know men, and are versed in their concerns, in the various walks of life, are aware that individuals of limited education, observe character, with eyes at once steady and clear; unengrossed by books, wide awake to the world around them, they acquire and digest that every-day knowledge, that prevailing and discriminating common sense, which enable them to select their public functionaries with judgment. Sir, we have a very pretty antithetical line written by a sweet poet who was a very lazy fellow, "Those who think, must govern those who toil." Nothing is so apt to delude a man and expose him to error in politics as poetry and metaphor. They lead him to make sense yield to sound, principles to flourishes of rhetoric. There lived in the last age another poet, and he will live for countless ages to come. He invigorated his understanding, and sharpened his perceptions by labor. You will recognize, in this description, the low-born but high-souled and enchanting Burns. He was a flax-breaker. His contemporary and acquaintance, Alexander Wilson, to whom the republic of science owes so much for his inimitable work on ornithology, was a *peasant* too. Yes, Sir, I myself have seen Horn, a weaver by day, a poet at night. Benjamin Franklin too, was of the peasant class. He labored hard for his daily bread. Gentlemen abhor abstractions. Let them learn, then, from those illustrious peasants this *practical truth, that moderate labor inspires sound sense*. I ask the Committee to test the correctness of my position, by inquiring how the non-freeholders in our sister States have chosen their representatives in the Federal Congress, as compared with the wiser freeholders of our native State? Lowndes of South Carolina, James Lloyd of Massachusetts, Rufus King of New York, William Pinckney of Maryland, *cum multis aliis*, were, or are the peers of the first talents that Virginia has sent forth. And now, Sir, are not Webster and M'Duffie, and Berrien, without naming others, additional living examples of the truth of my proposition? Such facts speak volumes. It were a most ungracious consumption of the valuable time of this enlightened and honorable body, to attempt, by any enlarged scope of argument, to prove that a man loves his birth-place as he does his mother, with an ardor that no time can efface, no circumstance extinguish. Sacred love of country, ineffable attachment to the natal spot, art thou the offspring of a churlish interest; or can gold purchase thee? Sir, the landless peasant clings to the rocky cliffs on whose summit he sported in the halcyon days of his boyhood, as the ligaments of his own heart bind it to his bosom. Away, then, with the idea of the gentleman from Spotsylvania, (Mr. Stanard) that a twenty-five dollar freeholder, a whole Commonwealth of whom Stephen Girard could create without impairing materially his resources, has a stronger, a more elevated, or more enduring attachment to his country, than the man I have faintly attempted to describe.

But, continued Mr. H. gentlemen have denied the propriety of permitting a man without property to vote equally with the rich man, because the latter brings into the common stock his fortune, as well as all that class of rights strictly denominated personal. In the first place, how is this position to be reconciled with the concession, that a man who has \$25 in land shall vote? If one man have \$100,000 and another \$25, the ratio is so very inconsiderable as to withdraw from the argument of my opponents the greater part of its force. Examine this branch of the subject in its true lights. A man without property stakes his liberty, his life, his reputation, his happiness, and *his right to acquire property*. While we surround property with so many fences, and guard it with so much solicitude, shall we not duly appreciate the right to acquire it? Shall we not, in the emphatic language of Napoleon, preserve for it "the open theatre?" Again, if the rich man brings in his property, does he not create the necessity of an expensive Government? It is mainly for his property that law is piled upon law in your Statute book, and that the onerous labors of your judiciary are demanded. He, too, engrosses the honors and emoluments incident to the operations of Government. It is rarely that you incur expense in making or administering law for the citizen without property, and still more rarely does he share in those distinguished and interesting functions. How stands the account in war? Are wars waged for the interest of the poor? Do their passions prompt or their possessions invite them? No, Sir. The ambition of the great men of Rome raised her armies to invade Britain; after over-running the fairest portion of the Island, they returned to enjoy their spoil, leaving the highlands unconquered. The poor and hardy Caledonians boasted that their gallantry had rolled back the tide of battle; but Gibbon says more truly, that the proud Eagle of Rome scorned to perch on the naked hills of "the land of the mountain and the flood." Sir, the cottager is always the instrument and often the victim of war, but he is never its author, and seldom shares its glory. Let not wealth, then, complain that it is taxed for its own interest, and its own protection and honor. But, Sir, property, as has been well said, has influence. It confers knowledge, and gives facility for improving the virtues of the heart and the

graces of the manner. This is power, concentrated, legitimate, resistless power, ever has been, and will continue to be, till time shall be no more.

Gentlemen intimate, that the enlarged and liberal Suffrage will engender tumult at elections, and impart to the populace, habits of dissipation. Have you not now mirth and irregularity and riot at your elections? What real evil springs from this source? The gentry drink wine and the lower classes alcohol. This is a subject of regret, but not an adequate cause for disfranchising the one or the other. A celebrated man in England, remarked that it was better the Nobleman's coaches should be bespattered by the mob than that the people should be made slaves. And it is better that cultivated taste be offended here, than that three-fifths of the body politic be powerless. For these transient inconveniences, a perfect remedy may be found in the creation of moderate election districts.

Mr. Chairman, we have one small, but conspicuous example of the correctness of the doctrine which I have the honor to maintain, in Virginia itself; and gentlemen, justly tenacious of the character of our ancient Commonwealth, ought to weigh it. The borough of Norfolk is entitled, as we all know, to a delegate in the lower House of our Legislature. In that borough, *pot-boilers and mechanics, who have served an apprenticeship*, are invested with the Right of Suffrage. How, Sir, have they exercised it? Look at their representation on this floor. One of those who exemplified their political fitness, in war the defence, in peace the ornament of the State, is here no longer. It is, Sir, an indisputable fact, that the *borough of Norfolk* has been represented in the Legislature, with an ability and patriotism which do honor to the city itself, while it is a *living and constant proof* of the capacity of the non-freeholders of Norfolk. And are not the non-freeholders of the county of Frederick as competent as they are? Is there any thing in the air of a city which gives light and purity to its populace, when citizens of corresponding grade throughout your wide confines are involved in darkness or steeped in impurity? We have been taught to believe that the multitude in cities was more depraved and more liable to political delusion than that dispersed over the surface of the country. Allowing them to be no worse than their fellow-citizens of Norfolk, time, the best instructor, establishes their claim. It is vain to contend that we are happy, and, therefore, that no amendment would be proper. Suppose the State were governed by an absolute monarchy, whose character was as benign as that of a Trajan or Antonine, and who made them happy for the time, would not the citizens assert their *political rights* as the sole security for the continuance of their *civil immunities*? Would they be content to hold their comfort, and peace, and all that is dear to man, upon courtesy? If not, ought the vast mass of citizens, the subject of our present debate, to remain content, because not actually *oppressed*? Ought they not to be placed in a predicament which would enable them to guard themselves from *possible oppression*? But, Sir, I respectfully insist that the non-freeholders of Virginia have been politically wronged, and that they are so now. Permit me, since we are boldly called upon to point out a solitary instance of misrule, to name a few, simply by way of example. Some of them will demonstrate the injustice done to those who do not vote; all of them manifest the unsound policy of the representatives of those who do.

This is an invidious task. I enter upon it with no feelings other than those of regret and pain. Professions are of little use. I will proceed with the argument. In Henning's Statutes at Large, vol. 6, page 439, and in the same book, page 532, may be found two Acts of Legislation, which will serve to exemplify, in a lively manner, the idea which I advance. I will notice, briefly, the last. It provides, that all the people of the country shall perform the arduous and perilous military duties incident to their circumstances, except certain official dignitaries, and owners of *four slaves*. The official characters were compelled to furnish arms and equipments as a substitute for their personal services; but the overseer of the opulent man was neither compelled to fight nor to pay. By the Act of 1754, to be found, page 438, two justices might cause to be seized any man not having a calling or support, except *voters or servants indentured or bought*, have him dragged before them, and finally decide to consign him or not to all the hazards and sufferings of war. If this was right in the general, why except voters, or, in other words, *freeholders*? Why except servants, *the property of these freeholders*? Can any man believe so gross a discrimination would have been made, if these freeholders had not held all the power, and the remainder of society been a proscribed caste? This example is not the less apt or illustrative, because it occurred under the Colonial Government.

Is not every gentleman somewhat struck with the fact, that the long denial of justice to thousands of citizens, is itself evidence of misrule?

The manner of working the roads of Virginia is little short of the odious *corvée* of France. If a man has two slaves, he is exempt from the imposition, while his poor neighbor, with all his sons, is liable to it. Imagine a wealthy man, often the case in the county where I reside, to have a large crop to carry to market, and a family for whose accommodation good roads are essential; this individual has six negro men;

his poor neighbor has six sons, who, together with their father, earn their daily bread by their daily labor. This man, with his six sons, is obliged to work upon the roads along side of the six slaves of his wealthy neighbor. The poor man, in the interim, never uses the road.

The entire county and parish levies are raised by a poll or capitation tax. In the county where I reside, this charge, for the four years next succeeding the last Census, was \$12,000, more than our whole contribution to the revenue of the State itself.

If a poor man owes 15 or \$20, his creditor may, in one month, sell under seire facias, at auction, the bed on which his sick wife languishes, and the cow that affords aliment to his children. Nothing is spared. Until within a few years, a man might own large landed estates, or valuable stocks, and unless he had personal property, his creditor might seize his person, and the law interposed, and, under the kindly facilities of the prison rules, he might live like a nabob. Even now, if he chooses to convert his prison into a drawing-room, he may employ his income in riot and luxury. I submit it to this Committee, to that part of it, at least, who do not conclusively assume that to be wise which has existed long, if these examples do not indicate too forcibly the exceptionable spirit of our legislation? I am aware, Sir, that I am now addressing gentlemen elected by freeholders. I appeal to their candor and good sense, and through them, to the liberal and dispassionate citizens of Virginia.

Sir, I ask if the state of the Judiciary of the country is not a reproach to the Legislature? Truly, we add the "law's delay" to the "proud man's contumely." I will not enlarge on this topic.

What is the general condition of the Commonwealth? A commerce inferior to that of the little State of Rhode Island, an agriculture languishing, the mechanic arts in a state of depression and thriftlessness, and provision made for the education of about one-eighth of the children annually educated by the small State of Connecticut. Yes, Sir, and they are not half so well educated.

As for the development of the natural resources of the State, through the medium of a system of improvement, the very mention of the subject is calculated to inspire melancholy. What, Sir, is your great James River Canal? Between one and two millions of dollars have been lavished on it, in the course of forty years—some thirty miles are completed! and the people of the State, provoked with this gross absurdity and waste, look on the whole enterprise with disgust.

But, if there be a Commonwealth on earth, where the Right of Suffrage is fairly and rationally susceptible of a most liberal enlargement, it is that of Virginia. Her people are habitually steady in their conduct; the mass of them are reflecting; and, libel them who may, every man who really knows the state of society, and is willing to be just to it, will attest the truth of the declaration, that morality and virtue are growing amongst us. Who is not struck with the temperance and sobriety of the rising generation, compared with that which is passing away? Vice and crime, I boldly affirm, have, within ten years, rapidly diminished; individual industry and energy, are increasing. Schools are multiplying, and religion is diffusing its genial influence over the land. Over this picture, rudely but faithfully sketched, I rejoice with filial joy; and while I cheerfully admit the virtue and stability of the freeholders, the middle classes, as they are termed, I cannot yield my judgment to the dictum, which confines virtue to any description of men. The gentleman and the cottager too, are pure. Yes, Sir, with individual exceptions, all deserve to share in the government of the community, that rules the land of their birth, the theatre of their joys and sorrows, that embosoms the ashes of their fathers, and unites the hopes of the children of their affections. The composition and circumstances of the society themselves, invite to the enfranchisement of the people. No large or populous cities agitate or corrupt us; few foreigners are intermixed with us; our pursuits, for the most part, agricultural; an extensive territory sparsely peopled; and a respect for order, for the character of the Commonwealth itself, animating all classes of citizens. Such is Virginia; such, the material for her Statesmen and law-givers. Are we to apprehend rapine, disorder, disorganization, from a paternal and generous course? Besides, more than three-fifths of the inhabitants, comprehending far the greater part of those termed in European countries the rabble, are slaves. This single circumstance, is enough to quiet all the apprehensions of gentlemen. It cannot be successfully contended, that a community, thus characterised and composed, is not to be trusted to govern itself; that its powers must be confided to the chosen few. From the days of Homer, to this day, it has been conceded, that to enslave a man, was to impair his worth; and, that to clothe him with the privileges appropriate to his nature, elevated his sentiments.

If it were questionable, whether the reasoning I employ were just originally, still half the force of the conflicting argument is taken away by the fact, that no other State in the Union retains the odious distinction which I combat. If the freehold Suffrage existed in the other States, the problem would exist in all its force and in-

terest; but, when it is abandoned by twenty-three States, to retain it here, were insufferable. The humble citizen of Virginia cannot pass the confines of Maryland, Pennsylvania, Ohio, Kentucky, or Tennessee, without being taunted by his neighbours with his vassal condition. The borderer on North Carolina beholds, amidst the most perfect social order and security, the very free negro exercising that privilege which is withheld from him. This is galling and most humiliating.

Let those who feel solicitude, and who does not, for the future destiny of the State, inspect, with a Statesman's eye, its diversified population. There are four distinct classes—the freeholder, the non-freeholder, the free negro, and the slave. Pause, Mr. Chairman, and examine this interesting subject. May not occasions arise when the common weal will loudly call for the united exertions of your white population? A large part of them have already poured their murmurs into your ear. Will you deafen it? I adjure you, Sir, I adjure this Committee to bind in the chords of common affection, the whole people, and to treat them as one family.

I cannot but think, that the condition of the world is greatly improved and rapidly improving. All virtuous men venerate their progenitors. But, how was it possible, in ancient times, to diffuse through society the knowledge which now prevails? The art of printing, itself, was sufficient to change the face of the world, and it is certainly changing it. The mariner's compass, post-offices, the application of steam in facilitating intercourse amongst men, and in the mutual transmission of information, are, with a steady pace, pressing us on in the career of mind. These, with many ancillary causes, are exalting and meliorating the species. Why shall we alone, lag and faulter in the generous race? Adopt a well-devised, wise, and economical system of education for all classes, and all will be capable of performing the cardinal duties of the citizen, will be worthy to become depositories of political power, and all will love with filial regard, the land of their birth.

After all, we are merely commissioned to sketch, for the adoption or rejection of the people, the plan of a Constitution. If they approve, they will establish it; if, on the contrary, they disapprove, they will reject it—and then our work will terminate. Why, then, do gentlemen attempt to alarm us? Why this cry of separation, intestine war, and all the horrors that eloquence can paint, or ingenuity conjure up? Rather, Sir, let us be calm, and endeavour to do our duty in a spirit of conciliation and harmony. One gentleman, for whom I entertain great esteem, distinguished by his talents and virtues, (Mr. Nicholas,) announced to us, the other day, that we were in a most awful situation, that clouds and darkness hovered over us, and terrible calamities beset our path. Permit me to congratulate that amiable gentleman upon the tranquil and serene aspect, which he exhibited to us in the midst of the storm he raised or fancied. I had the pleasure to sit near him, and marvelled at the placidity of his brow in a scene so appalling. Is there, Mr. Chairman, no rhetoric in those horrors? The same gentleman informed us that he had held an official station under the Government for some twenty years, and that things had flowed on with wonderful smoothness during the whole time. That may be, Sir, so far as the gentleman is concerned. A good official station has a charming effect in smoothing the asperities of life, and imparting brighter tints to the scenes around one. But, it does not follow, from all this, that the people are content with their disfranchisement. I wish the worthy gentleman a long continuance of the advantages he has so richly merited; but my first wish is for my country.

Another honourable gentleman, in speaking of the determination of the minority to retain its power, was pleased to hold to us of the West, for it seems I too am a Western man, the language which Sparta held to the Persian Monarch, when he demanded the surrender of their arms, "come and take them." Sir, here are no Spartans, no Persians. We are all Virginians. During the war of 1812, the citizens of Norfolk talked to us in a different language. They then said, "come and help us." And we went; and ranging ourselves under the banner of his gallant townsman, we bade the enemy "come and take the city." Aye, and we are ready to repair again to his succour. In fighting, there is no sectional line, no exclusion. Whenever the standard of freedom of Virginia, the "Star-Spangled Banner" is unfurled, in the East or the West, the North or the South, then will every true-hearted American be found to face, not his brothers, but the foes of his beloved and common country. Permit me, Mr. Chairman, humble as I am, to make a passing effort to relieve this learned gentleman from a distressing state of perplexity into which he has fallen. He seems to apprehend, that we shall not be able to discern and define the white man, with any sort of distinctness, and that the people of China and of the South American Republics, when they come hither, will puzzle our modicum of physical and political science to arrange them. This is a most embarrassing question, it must be admitted; but if the learned gentleman will concede our principle, we will endeavour to relieve him in the labour of its application; and should we not be competent to the solution of this matter ourselves, we have yet a resource which may save the Republic. We will call Dr. Mitchell into consultation, and from the acumen and erudi-

tion which he displayed upon the occurrence of a similar difficulty in the celebrated case of the *Almshouse vs. Alexander Whisteloe*, he will doubtless prescribe with effect.

Mr. Chairman, it is not a question who is white; but how shall the wrongs of the people be redressed. *Sixty thousand men*, in a land of liberty, ask their fellow-men to admit them to an equal participation in their political rights: they ask in the spirit of brotherhood, but, in the unquailing voice of conscious rectitude and firmness. Every where around them they see those who have the same claims with themselves, and none other, standing up and giving assurance that they are men. Shall they, they alone, bear the stamp of political villinage?

The Committee assenting, the resolution respecting the Right of Suffrage was, for the present, laid aside, and

Mr. H. having resumed his seat, Mr. Pleasants asked as a favour of the Committee, that the resolution now under consideration might be laid aside long enough to afford him an opportunity of presenting to this body a proposition of his own, which he offered as the basis of a compromise.

Mr. Pleasants then offered the following amendment to the fourth resolution of the Committee:

The original resolution reads,

"*Resolved*, That the number of members in the Senate of this State ought to be neither increased nor diminished, nor the classification of its members changed."

The amendment proposes to strike out all after the words "*Resolved, That*" and to insert as follows:

—"representation in the Senate shall be based on the whole number of free persons, including those bound to service for a term of years, and excluding indians not taxed, and adding to the aforesaid number of free persons, three-fifths of all other persons; and the Senate shall consist of a number not exceeding , and its term of service and classification remain as at present."

In supporting the amendment, MR. PLEASANTS spoke, in substance, as follows:

I have risen to make the motion just now intimated to the Committee—which motion, I had hoped some other member would have made. I had hoped some gentleman of standing in this body, some gentleman of standing in the community, and of weight of character, would have risen to make some such motion; but I have been so far disappointed. I will then present the proposition, under the hope that it may tend to bring about a reconciliation, and lead to those concessions, which are so desirable, and which many gentlemen think absolutely necessary to the further progress of our proceedings.

The district I represent, has received the notice of several gentlemen, in the course of this debate. It is what I fully expected, and what I am very glad to see. The respectable and intelligent people whom I represent, (I hope I shall be permitted to term them so, for it is no more than the truth,) have put themselves in that point of view in which they are entitled to stand before this body. I have heard it frequently insinuated here, that the people are in the dark, and are therefore not competent to decide on that branch of the subject which has occupied our attention so long: that they want more light, more information, and that they ought to receive it. Sir, this is all well: the people will receive with thankfulness, all the information which may be given them. But, I have never been disappointed in the expectation that they will always come to correct conclusions if left to themselves, and not misled in their judgment by some who have more influence than is wholesome for this Commonwealth. In saying this, I have no particular reference to the present juncture, nor do I point the remark at any individuals. I have given the most profound attention to the discussions which have taken place. The various subjects which have come before us have been most ably handled. The best talents of the State, talents which I have often witnessed and long admired, have been employed upon them. The country has been illuminated, and I have myself been greatly profited. An intense interest has been excited every where, but my district has not changed its position as far as I am informed. The majority of the little county in which I live, it is true, been against the opinions of the majority of the district, but they have honoured me with a seat here. It is an honour which I duly appreciate, and a proof of their respect and confidence which I can never forget. I should be a villain, if I could wipe the remembrance of it from my heart. No, Sir—it will be there when I die. I am more singularly situated, not only as it regards the geographical position of my district, but in some other respects, than many other gentlemen. I did not go through my district, nor did I know the sense of the people, till the day of the election. I heard that my name had been mentioned as a candidate, and I hastened to promulgate my sentiments, in the fullest and most explicit manner. Give me leave to say, that the subject was fully canvassed. A gentleman who is particularly conversant with the finances of the Government, and who is very thoroughly acquainted with all matters relating to it, laboured with his utmost energy to produce an impression

contrary to that which the people entertained, but without success. He exerted his utmost ability, but his efforts did not succeed.

Gentlemen have made their appeal to the Albemarle district, and to its position in relation to this question. I felt the full force of their appeal, and had I thought they were wrong, and could I consent to violate the known will of a majority of my district, I would have yielded to that appeal. But my attachment to numbers, and to the principle that the majority who are bound to fight and to pay, ought to have the power to vote, was not for one second shaken. I concluded the appeal to be in part directed to myself, from what an honorable member from Chesterfield said, in relation to a certain letter which he had seen. My disposition was to do all I could for the security of the slave property in consistency with my view on the great principles of Republican Government. The district I represent, is deeply interested in whatever touches that property, as it probably contains as many slaves in proportion to its extent, as any other portion of the State. And I should be the very worst of men, if I could voluntarily jeopardize such an interest. It had been my opinion, that some standard for taxation might be taken from the relative value of land; and that the one property should not be taxed save in a given ratio to the other; but on this point, I have found myself in a very small minority. I did believe that the thing might be made practicable, and that there would be no difficulty in stopping the violation of the Constitution, *instantly*. But, as the project was disapproved in the Legislative Committee, I do not know that I shall offer it here. In the proposition I now advance, I am convinced, that I go beyond the opinions of my constituents, as it was at the time of the election. But what is to be done? The Convention is almost equally divided. Gentlemen ask us whether we will press measures with so small a majority? But, Mr. Chairman, what must we do? Can they expect us to desert our own principles, and to fly in the face of a majority of our constituents? Must we be willing to yield to a minority? Sir, such an expectation cannot, and ought not to prevail. The venerable gentleman from Loudoun, (Mr. Monroe,) gave us most parental and conciliatory counsel, and expressed his own predilections in favour of the plan embodied in my amendment; but he did not follow it up with any specific motion. I have felt it my duty to bring the plan before the Committee. I have done so in the very best spirit, and with a strong hope of effecting the compromise. I have proposed the Federal number, because it is most simple, best known, and the most easily reduced to practice. But if gentlemen prefer introducing in the Senate, the principle of a mixed basis of representation, I am perfectly ready to modify it in that way.

Mr. Nicholas observed, that as he was one of those who voted for affording his highly esteemed friend from Goochland an opportunity to offer his resolution, he thought it proper to state, that he was influenced in giving that vote by a spirit of courtesy, and by a wish to gratify that gentleman. But, as his proposition goes ahead of the discussion, and refers to a resolution which will come on hereafter, it would be improper to take it up at this time. There were considerations connected with the proposition, which he wished to weigh in his own mind; he, therefore, moved that the resolution offered by the gentleman from Goochland, be for the present passed over.

Mr. Pleasants seconded the motion, and stated that, as his resolution was closely connected with the subject of the basis of representation before the Convention, he deemed it proper to submit it, whilst that subject was undisposed of. He hoped, therefore, that his resolution might lie on the table, and be printed. The Chairman took the question: Shall the resolution be passed over for the present? which was carried.

Mr. Pleasants then moved that the subject, the consideration of which had been suspended, should be resumed; which was carried.

MR. NICHOLAS, after requesting the Chairman to report the amendment, spoke, in substance, as follows:

My sentiments, Mr. Chairman, are so different from those just expressed by the gentleman from Loudoun, (Mr. Henderson,) upon this interesting subject, and my district is so much opposed to the measure now under consideration, that I feel it an imperious duty to submit to the Convention my views on it. The amendment has certainly the merit of advancing boldly to the question, and proposes, what I conceive, amounts essentially to Universal Suffrage. There cannot be a more fit occasion to enquire, what ought to be the basis of Suffrage, than when it is proposed to extend that right to almost every man in the country. I find myself, Mr. Chairman, placed in a new attitude. If we are to take the sentiments of myself, and those with whom I act, from the representations of the gentleman from Loudoun, we should be induced to suppose, that we are not only inimical to the whole class of the poor in this country, but to Republican institutions in general. I do not mean to make professions of my principles. But I may be permitted to say, that though in the different political scenes and vicissitudes which have taken place in this country, my situation may

have been humble and obscure: though I have not filled high stations, I have not stood by with apathy as to passing events. I have always taken a deep interest in them, and have not been inactive. It is true that I have served as a private, but have felt as much zeal, as others who were more elevated. I had supposed that from my boyhood, I was engaged in defending free principles, by fighting under the banners of the most distinguished patriots of the land; but now the gentlemen on the other side, endeavor to take our weapons out of our hands, to defeat us with them. This policy of attempting to alienate the people from their friends, is as old as the days of *Æsop*. We are told in one of his fables, that certain shepherds had their flocks protected by their watch-dogs, who proved faithful sentinels, and resisted every effort of the wolves to break into the fold. Baffled in their attempts, the wolves persuaded the shepherds that it was an useless expense and trouble to maintain these faithful sentinels, and made solemn promises, that if they would dismiss them, they should sustain no injury. Deluded by these assurances, the shepherds complied with the request, but the consequence was, that the wolves broke into the fold and destroyed all the flock. But such policy will not be effectual in this country; the people are intelligent; they know who are their friends, and they will never abandon them.

The gentleman from Loudoun has been pleased to say, that when on a former occasion I depicted the evils which would result from an attempt to force a Constitution upon a large portion of the people, which they believed to be oppressive and ruinous to them, and that by a meagre majority, and stated that the consequences might be awful, that I could not be in earnest, because my countenance, at the time, expressed no strong emotion, but was placid and unmoved. But that gentleman is yet to learn that a placid countenance is not incompatible with firmness of purpose; and I trust that in the discharge of the duties which I owe my constituents, I shall not flinch from the assertion of their rights, but be as firm and immovable, as any gentleman, with whatever fervor of manner, he may support his opinions.

I cannot, Mr. Chairman, promise the Committee to gratify them with the great variety of topics and illustrations, which the talents of the gentleman from Loudoun has enabled him to lay before them. It shall be my humble endeavour to discuss the question before the Committee. I shall not doubt the sincerity of the gentleman's opinions, though he would appear to question mine. [Mr. Henderson here stated, that he did not doubt the sincerity of the gentleman, but only whether under momentary excitement, he might not have expressed, what in calmer moments he would have repudiated.]

Mr. Nicholas observed, that he did not know how he could be understood to have spoken under excitement, when a placidity of countenance at the moment was attributed to him, incompatible with the feelings he expressed. He continued—I received with pleasure the assurances of good will, and good feelings expressed by the gentleman from Loudoun, and cordially reciprocate them. He said he should disdain himself, if he suffered difference of sentiment on public subjects to inspire him with ill will to any gentleman. It was not his habit. Every thing which had occurred in his intercourse with the gentleman from Loudoun, during their short acquaintance, had impressed him with far different feelings.

Mr. N. said, he should proceed to discuss what was the real question before the Committee, stripped of those extraneous considerations, which do not bear upon it, and which are rather calculated to mislead, than to enlighten. This subject has received from me, Mr. Chairman, my anxious consideration; not only since it has been agitated in this Convention, but whilst during the canvass, which preceded the elections, it was discussed in the public prints, in speeches to the people, and in the addresses of various gentlemen who were called on to declare their sentiments. Amongst the arguments relied upon by the advocates of a very extended Suffrage, one of the most fallacious, is, that which attempts to found the right upon principles of natural equality. This pre-supposes that Suffrage is derived from nature. Now, nothing can be clearer, than that Suffrage is a conventional, and not a natural right. In a state of nature, (if such state ever existed except in the imagination of the poets,) every man acts for himself, and is the sole judge of what will contribute to his happiness. When he enters into the social state, which he is compelled to do, to guard himself against violence, and to protect him in the enjoyment of the fruits of his industry, he gives up to the society the powers of Government, and surrenders to it, so much of his natural rights as are essential to secure to him such portion of those rights which he retains, or such other rights as grow out of the new relations in which he is placed.

In the rudiments of society, and whilst the people are few, the making laws and the decision on the most important concerns, such, for instance, as war and peace, were exercised by the body of the people in their collective capacity. Such was the ancient republic of Athens, and some of the other Grecian States, and such is said to be the little republic of St. Marino. When the community became large, it was found impracticable to exercise their sovereignty in their primary Assemblies. These

were too numerous for deliberation, and were too much under the control of violent passions, and too liable to be influenced by the seductions of artful men, who flattered the people only to destroy them. It was found absolutely necessary, to entrust the making of laws and the management of the public affairs to agents, or deputies, and this gave rise to representation. The power of voting for these agents or deputies constitutes the Right of Suffrage. This plain exposition of the origin and formation of society, incontestibly shows that both Representation and Suffrage are social institutions. It proves that it is a solecism to insist, that it is proper to refer back to a state of nature, for principles to regulate rights which never existed in it—which could only exist after mankind abandoned it, rather than by a correct estimate of those relations, which are to be found in a state of society, of which, both Representation and Suffrage are the offspring. It has been attempted to sustain almost unlimited suffrage, (I know not whether in the Committee, as I did not come in until after the gentleman from Loudoun had been speaking some time, but certainly elsewhere,) by reference to those general phrases in the Bill of Rights, which declare, "that all men are by nature equally free and independent." But the same section of the Bill of Rights plainly discriminates between the state of nature, and the social state, and admits the modification which natural rights may receive by entering into society. It is true it speaks of inherent rights, of which men, when they enter into society "cannot by any compact deprive or divest their posterity;" "namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." But it is most obvious that this last clause does not comprehend suffrage, or representation, or any fancied rights growing out of them; first, because these are not natural rights; and next, if they were, as the clause last referred to enumerates the rights which a man in a social state cannot alienate, and that enumeration has nothing to do with suffrage or representation, it must in candour be admitted, that these subjects are surrendered (so far as the Bill of Rights is concerned) to the regulation of society. These considerations, Mr. Chairman, appear to me clearly to prove, that in deciding upon suffrage, we are deciding a question of expediency and policy, and that we ought so to regulate it, as will best promote the happiness and prosperity of society. Our opponents have themselves afforded unequivocal evidence of the truth of what we contend for, by advocating schemes of suffrage which profess to impose restrictions on the exercise of the right, though those restrictions (in my humble judgment) are totally inadequate and illusory.

I have reflected much on this subject, because every one must have anticipated, that it would be, save one, the most important which could employ the deliberations of this assembly, and that with the one alluded to, it had the most intimate connexion. In forming my opinion, I am perfectly satisfied, that the rule laid down in our Bill of Rights, is the true one on this subject. And here, Mr. Chairman, permit me to join most heartily in the eulogiums which have been so repeatedly pronounced by the gentlemen on the other side, on the profound wisdom, exalted patriotism, and unbounded devotion to free Governments, of the framers of our Bill of Rights. I subscribe entirely to every part of it, and adopt it as containing the articles of my political faith. It is much, however, to be deplored, that whilst these gentlemen pay such adoration to the Bill of Rights, and its authors, they should in the same breath deny that they understood their own principles, and assert, that in the formation of every essential part of the Constitution, they were guilty of a flagrant violation of them! What then, is the rule laid down by the authors of our Constitution on this subject? It is, "that all men having sufficient evidence of permanent, common interest with, and attachment to, the community, have the Right of Suffrage." Every part of this definition, Mr. Chairman, is highly important. First, there must be "sufficient evidence," and next, it must be the evidence "of permanent, common interest with, and attachment to, the community." Now, I contend that this sufficient evidence of common, permanent interest, is only to be found in a lasting ownership of the soil of the country.

This kind of property is durable, it is indestructible; and the man who acquires, or is the proprietor of it, connects his fate by the strongest of all ties, with the destiny of the country. No other species of property has the same qualities, or affords the same evidence. Personal property is fluctuating—it is frequently invisible, as well as intangible—it can be removed, and can be enjoyed as well in one society as another. What evidence of permanent interest and attachment, is afforded by the ownership of horses, cattle, or slaves? Can it retard or impede the removal from the State, in times of difficulty or danger impending over it? What security is the ownership of Bank or other stocks, or in the funded debt? None. A man may transfer this kind of property in a few moments, take his seat in the stage, or embark in the steamboat, and be out of the State in one day, carrying with him all he possesses.

The same objection applies to admitting persons who have only a temporary interest in the soil: besides, that these temporary interests give a control to others, over the votes of the holder, just as certainly, as that "a control over a man's subsis-

tence, is always a control over his will." In vain do gentlemen refer to the example of other States. Here we have a safe rule laid down, by the wisdom of our ancestors, whom gentlemen unite in canonizing, and tested and approved by the experience of more than half a century. Sir, I always thought I was a republican, but gentlemen would argue me out of my belief. I have always supposed, that our Right of Suffrage was so constructed, as to protect both persons and property. God forbid that I should wish to exclude any, who I can be convinced ought to be admitted, or that I would oppress any portion of my fellow-citizens. My principles would lead me to admit all I could, consistently with what I believe the welfare of society requires. I am no enemy to the non-freeholder; but I must vote for that rule, which by securing the tranquillity and happiness of society, secures those inestimable blessings to every member of it. I do not deny to the advocates of greatly extended suffrage, either in this House or out of it, perfect rectitude and sincerity of motive. Enthusiasm is always sincere—but that truth does not at all mitigate the evils and desolations, which it has often inflicted on mankind.

Sir, I know it has become fashionable to represent those who are opposed to many of the innovations which are contemplated, as the enemies of the people. Whether I am their friend, I shall endeavor to manifest by my acts, and not by my professions. No denunciations have any terror for me. They will pass by me "like the idle wind which I regard not." There is what I consider a very strong and decisive argument in favor of the rule I lay down, for suffrage to be drawn from the act of the framers of our Bill of Rights, which is contemporaneous with it. It is that part of the Constitution, which declares "that the Right of Suffrage in the election of members of both Houses, shall remain as exercised at present." Now, the freehold suffrage was then the established mode. The framers of your Constitution declare to you in the most emphatic manner, that the rule which they laid down in the Bill of Rights as to suffrage, could only be complied with, by requiring a permanent interest in the soil. Here then, is contemporaneous exposition always deemed the best. Nay, more, here is a declaration of these wise men who framed the Bill of Rights, as to what they intended in it. Will gentlemen contend, after their splendid eulogiums on them, that they did not understand their own words and intentions, but that the men of the present day, are better expositors of both? But the intelligent gentleman from Frederick, endeavours to obviate the force of this argument, by insisting that this part of the Constitution is not to have the same authority as other parts, because the framers of the Government did not, for the first time, establish the rule of suffrage, but merely left it as they found it. This may be specious, but in my poor judgment, is not solid. The framers of our Government were employed in establishing a system adapted to the changes produced by the revolution. It was not incumbent on them to change every thing. It was only wise and proper to abolish such parts of our former system, as were irreconcilable with the republican form we were about to carry into effect. Thus, we find in several parts of the Constitution, portions of the old institutions were retained. But they were retained upon due consideration, and by adoption became just as much the act of the framers of the Government, as the parts which were created by them. If the framers of the Government had said the suffrage should be conferred on the freeholder, it would be admitted, I presume, that in every sense, it was a rule established by them. Now, can it make any difference, except in mere form, that a phraseology is used, which retains the rule of suffrage which had previously existed. But the same gentleman contends, that the retention of the Right of Suffrage, as theretofore exercised, resulted probably either from the Constitution being made in haste and amid the noise of hostile cannon, or that it was a sacrifice made to propitiate, or rather to avoid the alienation of the freeholders. Both these hypotheses appear to me to be incorrect. As to the Constitution being the result of hasty or timid councils, the gentleman from Chesterfield, (Mr. Giles,) in a former debate, has clearly shown, on the best evidence, it was not the case. And as to this provision being an oblation to the freeholders, I find no trace in the Constitution itself, in the history of the times, or even in any tradition which has come down to us, to justify the idea. I believe that at the period spoken of, there was such a devotion to country, such a love of liberty, and such disinterestedness, that the Convention might, with perfect safety, have made any arrangement which they believed would contribute to sustain free principles. But they were wise and practical statesmen, and they knew and felt, that they had established a rule which was perfectly compatible with republican institutions. The force of the argument derived from their authority, as well as from the experience under it, remains complete and unimpaired. Gentlemen argue this question as if it was one between the Satraps, (the existence of whom they choose to suppose) and the poor of the land. Instead of making war upon the middling or even the poorer classes, we believe we are defending their best interests. We go not for the interests of wealth, when we say, that we are of opinion that an interest in the soil is the best evidence of permanent attachment. This idea of an aristocracy of freeholders, is not only incorrect but ludicrous. Are we con-

tending for giving wealth in the distribution of suffrage, a weight in proportion to its extent? The answer is, that a freeholder, whose farm is worth fifty dollars, has as available a suffrage as one who has land worth two hundred thousand dollars. Are we for fixing a high property qualification? We reply, that it appears from this debate, that a man can get a freehold in almost any county in the State for fifty dollars, and in some (indeed many) for twenty-five dollars, or for a smaller sum. And yet we are gravely told, that these freeholds, accessible as they are to the industry and exertions of all, constitute an odious aristocracy. Sir, we do not even require that these freeholds should be productive, (as many of them are not) of one cent of revenue. Sir, the beauty of this system, its republican feature, is, that the humblest freeholder is put on a footing with the richest man in the State. It was a little remarkable that the report of the Legislative Committee proposed what I conceived to be a violation of our Constitutional principles on this subject, by requiring that in addition to the quantity of acres required by law, there should be a tax to a certain amount paid. I voted against this restriction, and I am glad it was stricken out by a large majority. I am for depriving no man of a vote, now entitled to it. I care not whether a man's freehold be productive or otherwise. It is his all, and is as dear to him, as the freehold of the owner of thousands of acres is to its proprietor. But it is said, that every man who pays a tax ought to vote—now, what evidence of interest in the community, is furnished by the payment of four cents upon a horse, or paying a poor rate and county levy? Is it even the semblance of testimony, that the person paying it, intends to remain in the Commonwealth? It is also contended that service in the militia, is a proper and valid claim to a vote. It is said the non-freeholder fights your battles—but does not the freeholder do so too? And does he not do another thing, pay for the support of the non-freeholder? War cannot be carried on by men alone: you require munitions of war, provisions and every thing necessary to equip and sustain an army. Without these, numbers are of no avail, indeed injurious. Your army would soon be disorganized without them. In time of peace, the militia service which is common to freeholder and non-freeholder, is light, if not nominal. In time of war, you draw heavily on the property of the country, and then the freeholder is not only bound to fight, but to pay. We have a strong example of this during the last war. During that war, Virginia was thrown very much upon her own resources, and having found that the keeping very large bodies of militia in the field, was very harassing to the people, very expensive, and not very efficient, the Assembly determined on raising ten thousand men for the defence of the State. The law provided, that the expenses of these troops should be assessed on the property of the country, and it would have fallen with great and oppressive weight on the land and slave-owners. Happily, the intervention of peace saved the country from the severe burthens, to which the property-holders would have been subjected. But it serves to show, what ever will be the case, when we are exposed to the calamities incident to war.

The gentleman from Loudoun has stated, that he knows of no particular virtue attached to the soil, that we should select the owners as the sole depositories of political power. All professions are on a par in his estimation. I do not pretend that great virtues may not be found in all the professions and walks of life. But I do believe, if there are any chosen people of God, they are the cultivators of the soil. If there be virtue to be found any where, it would be amongst the middling farmers, who constitute the yeomanry, the bone and sinew of our country. Sir, they are men of moderate desires, they have to labor for their subsistence, and the support of their families; their wishes are bounded by the limits of their small possessions; they are not harassed by envy, by the love of show and splendor, nor agitated by the restless and insatiable passion of ambition. When they lay their heads at night upon their pillows under the consciousness of having spent the day in the discharge of their duties to their families, they enjoy a sweeter sleep under their humble roofs, than frequently do those who repose in gilded palaces. Amid the same description of persons, I should look for independence of character. It is a fact, that our voters are less exposed to influence and intrigue, than any, I believe, in the United States. A man may be popular enough to be elected himself, but he cannot dictate to the voters to elect any other. A man who would attempt this would be apt to be insulted, and I have known illustrious examples of some of the most popular men; aye, Sir, in the zenith of their popularity, who could not control an election in favour of another. Do you ever hear in this State of a man being called, as in some of the States, the partizan of some great name? A Livingston man, or a Clinton man for example? Ask one of our freeholders whose man he is, he will tell you he is his own man. These men know that their land is their own, that they are the lords of the soil; that according to the principles of the common law, their house is their castle, and that no man dare invade either, with impunity. Do you believe, Mr. Chairman, that there is any property which attaches a man so much to the country as the land? There is none. His attachment to his home, is connected with the best sympathies of the human heart. It is the place of his boyish sports, the birth place of his children; and contains the

bones of his ancestors. He will love his country which contains a home so dear to him, and defend that country at the hazard of his life.

There is one consideration which shows the propriety of making land the basis of political power. It is, that the land, has always been, and will ever continue to be, the principal source from which all your taxes are derived. The freeholders, if they are an aristocracy, are the most lenient aristocrats who ever existed. From the foundation of our Republic, and long before, land-holders, who are the largest slave-holders too, have paid your principal taxes. We have parted with the customs to the General Government, and the only other sources of revenue of any great extent, are your lands and negroes. The freeholders too, pay a large share of the other taxes, such as taxes on licenses, horses and carriages. You can never expect to see a capitation tax, nor an income tax. They both are odious in their character; the first is very unjust, and the second must be attended with such inquisitorial powers to your officers, and be so easily eluded by fraud, that it will not be attempted. They tried it in England, and it was the cause of overturning the ministry which introduced it. But the great advantage of the freehold system is, that it keeps the Government in the hands of the middling classes. So far from being aristocratic, it is the best safeguard against aristocracy. It places the power in the hands of those who are interested to guard both property and persons against oppression. The idea of aristocracy is absurd. Did you ever hear of an aristocracy of fifty dollar, or twenty-five dollar freeholders? In the hands of these freeholders, personal rights are just as secure as the rights of property. Many of the non-freeholders are the sons of freeholders. Would they support measures which would oppress their own sons? Besides, have not the great body of the freeholders such perfect identity of condition with the non-freeholders, that they could pass no law for the regulation of personal rights which would not equally affect them as well as the non-freeholders. To those who take a superficial view of things, it might appear that placing the power in the hands of men, without regard to their condition, would advance the cause of liberty. Many will tell you, Sir, that they would do this to counteract the influence of wealth in society.

But these men, many of whom are ardent friends of liberty, are unconsciously laboring to undermine the cause of which they mean to be the strenuous advocates. As long as political power is placed as it now is in Virginia, in the hands of the middling classes, who, though not rich, are yet sufficiently so, to secure their independence, you have nothing to fear from wealth. But place power in the hands of those who have none, or a very trivial stake in the community, and you expose the poor and dependent to the influence and seductions of wealth. The extreme rich, and the extreme poor, if not natural allies, will become so in fact. The rich will relieve the necessities of the poor, and the latter will become subservient to the ambition of the rich. You hear nothing of the bribery and corruption of freeholders. No man is hardy enough to attempt it. But extend the Right of Suffrage to every man dependent, as well as independent, and you immediately open the flood-gates of corruption. You will undermine the public and private virtue of your people, and this your boasted Republic, established by the wisdom of your ancestors, and defended at the hazard of their lives, will share the fate of all those which have preceded it, whose gradual decline, and final extinction, it has been the melancholy task of history to record.

Mr. Chairman, the revolution of France has been frequently invoked into this debate, by the gentlemen on the other side; but I cannot see to what useful purpose of argument they have applied it. I do not see that there is any thing very inviting in the progress or termination of that revolution, from which we can infer the propriety of a hasty, inconsiderate and radical change of our institutions. The French, I believe, had cause to be greatly dissatisfied with their ancient Government. During that revolution, though young, I was an enthusiastic admirer of what I believed to be the cause of the people resisting oppression. But the excesses of that revolution, have done more injury to the cause of freedom, than any thing which has happened in modern times. Those excesses have served to rivet the chains of despotism in all the monarchies of Europe. Those who set the revolution in motion, were many of them, I have no doubt, virtuous and enlightened men. But they were more of philosophers and theorists, than practical statesmen. They enlightened the minds of the people. They pointed out the oppressions and tyranny under which they suffered. They raised a storm, which they had not the power to direct, and of which they became the victims. They devised schemes of Government, which were either not adapted to the state of the times, or which the people were incapable of living under. They did not know how free Governments would work: meanwhile, there arose factions, to which revolutions not unfrequently give birth, consisting of men who had nothing to lose and every thing to gain—men dissolute and depraved—who, under the mask of patriotism, were bent on the acquisition of wealth and power. Those persons collecting round them all the men of desperate fortunes, aided by the mobs of

Paris, began by pushing revolutionary principles to an extreme, which those who commenced the work of reformation never contemplated; and because they would not sanction the crimes which were perpetrated by the mountain and other factions, they were brought to the guillotine. Every man must recollect with horror, the bloody scenes, which took place in France, when no age, no sex, no virtues were safe from the infuriated monsters who perpetrated crimes under the profaned name of liberty. I mention not these things in derogation of the cause of freedom. I should rejoice to see free institutions established in every country which willed to be free. But what was the result? After spilling oceans of blood, France flew to the arms of despotism as a refuge from crimes and miseries inflicted under the abused name of liberty—and where is she now? Restored to the dominion of the same odious dynasty, to escape which, she suffered so long and so cruelly. The misfortunes she has undergone, have strengthened what is called the cause of legitimacy, by uniting all the despots of the world, in a crusade against liberty, and rendering desperate the friends of liberal principles in every part of Europe. I have dwelt too long on this subject, and should not have said thus much, but that the example of France has been so often quoted on us. Our lot in this Commonwealth is a happy one, if we would but be content with it. Our institutions are free, no man is oppressed, and every man is secure in the enjoyment of the fruits of honest industry. Our Government has no taint of monarchy, or aristocracy, and power is in the hands of the great body of the yeomanry of the country. What can a people want more!

It was not my purpose to answer the gentleman from Loudoun in detail. I wished to give a general view of the principles, on which I vindicate the freehold Right of Suffrage, though it may be capable of some modifications. I will make a few remarks, however, on the charges of oppression and misrule, which the gentleman has brought against the existing Government. The gentleman must have been hard pressed for facts to illustrate his opinion, when he has resorted to a period of remote antiquity, the year 1656, to quote an insulated provision in the Statute Book, to shew oppression in the freeholders. I allude to the exemption of voters and overseers from militia services. This law remained in force only a few years—we hear of no instance of complaint against it—and we do not know but it originated in sound policy, which might have required, that in the then state of infancy of the Colony, surrounded as they were by hostile tribes of Indians, and trembling for their existence, it might have been necessary to keep a certain portion of the population employed in raising the means of subsistence, whilst others were engaged in guarding the frontiers, or repelling incursions.

The other specifications of supposed abuses, appear to me unimportant in their character, and susceptible of easy answers. But I have already trespassed too long on the indulgence of the Committee, and will conclude with observing, that when the talented gentleman from Loudoun, after the other side have been so long called on, to point out any abuses which have existed under this Government, has only been able to find such as he has enumerated, it amounts to the highest eulogium, which can be pronounced on our institutions.

Mr. Leigh now moved that when the Convention adjourned, it adjourn to meet at eleven o'clock; which motion gave rise to a desultory debate, in which Messrs. Leigh, Mercer, Stanard, Doddridge and Nicholas took part, and which resulted in the adoption of Mr. Leigh's motion, by a large majority; and then, on Mr. Doddridge's motion, the House adjourned.

THURSDAY, NOVEMBER 19, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Taylor of the Baptist Church.

The House went again into Committee of the Whole, Mr. Powell in the Chair:

And the question being on the following amendment of Mr. Wilson, as modified at the request of Mr. Henderson:

“Resolved, That every free white male citizen of this Commonwealth, of the age of twenty-one years, and upwards, who shall have resided in the State two years, and in the county where he proposes to vote, one year next preceding the time of offering such vote; who shall have been enrolled in the militia, if subject to military duty; and who shall have paid all levies and taxes assessed upon him, or his property, for the year preceding that in which he offers to vote, shall have a right to vote for members of the General Assembly: Provided, That no person shall be permitted to exercise the Right of Suffrage, who is a pauper; who is of unsound mind; who has been convicted of any infamous crime; or who shall be a non-commissioned officer or private soldier, seaman or marine in the regular service of the United States, or of this

Commonwealth; and the Legislature shall prescribe the mode of trying and determining disputes concerning the said qualifications of voters, whenever the right of a person to vote shall be questioned."

The Chairman rose to put the question, when

Mr. TREZVANT of Southampton took the floor in opposition to its passage.

Mr. T. said, that he had not intended to have said any thing upon the subject under the consideration of the Committee, nor had he expected to have said any thing upon any other subject which might be discussed in the Convention; but as the proposed amendment, the question under debate, notwithstanding its importance, was about to be submitted without any other discussion than that which it received yesterday, he felt himself impelled to submit a few remarks—remarks of course, which could not be the result of any previous preparation, and which necessarily must be desultory in their character. What was the question under consideration? The object of the amendment was to abolish the present modification of the Right of Suffrage, and to substitute in its place, one entirely new to us. When a people undertake to make a change in their political institutions, affecting the foundation of Government, it behoves them to proceed with the utmost caution and circumspection. We should recollect that we are about to introduce an experiment which is to operate upon the affections, prejudices, and long-established habits of the community, and the consequences cannot be distinctly foreseen or foretold. A numerous population, falling not much short of a million, cannot at once throw off their old usages and customs, and accommodate themselves to an entirely new order of things, radically different from that under which they had lived in peace and tranquillity, without incurring the risk of many and great evils. This Government had existed for more than fifty years, and under it, the people had enjoyed happiness and contentment. There were, it is true, occasional clamors arising from local causes and prejudices, and not from any real defects in the form of Government; and he hoped this amendment would not be adopted to allay such complaints. In that part of the State in which he resided, he had not heard of any serious complaint touching the Right of Suffrage. The people there, in this respect, at least, were satisfied; why then adopt this new qualification of the Right of Suffrage, which in his poor opinion, would put to hazard the best interests of the country, and even endanger the liberties of the people? We are called upon to substitute for the Freehold Suffrage, that which, if it be not Universal Suffrage, falls but little short of it. It is proposed that those who are twenty-one years of age, who bear arms, and have resided twelve months in the county in which they propose to vote, should have this right, and the adoption of the principle amounted in effect, to what he called Universal Suffrage. He was told by one gentleman, (to the correctness of whose statistics he did not, however, feel himself bound to subscribe,) that the adoption of this measure would add to the number of voters in the State more than 60,000, the present number being somewhat more than 40,000. Thus, the power of the Government is to be transferred from the hands of the 40,000, who have the deepest interest at stake, to the 60,000, who have comparatively but little interest. It is no idle chimera of the brain, that the possession of land furnishes the strongest evidence of permanent, common interest with, and attachment to, the community. Much had been already said by gentlemen on both sides, demonstrating the powerful influence of local attachment upon the conduct of man, and he could not be made to comprehend how that passion could be more effectually brought into action, than by a consciousness of the fact, that he was the owner of the spot which he could emphatically call his home. It was upon this foundation he wished to place the Right of Suffrage. This was the best general standard which could be resorted to, for the purpose of determining whether the persons to be invested with the Right of Suffrage, were such persons as could be, consistently with the safety and well-being of the community, entrusted with the exercise of that right. Much had been said in the discussion yesterday, of the oppression and impolicy resulting from an adherence to the present restricted Suffrage, which he presumed was intended to produce some effect upon public opinion, for he could not suppose it was intended as a serious argument addressed to this Committee.

Among other things, we had been seriously told by one gentleman, that many of the citizens of this Commonwealth, non-freeholders, labouring under a sense of the great injustice done them in withholding this Right of Suffrage, were known to abandon their native State, and to emigrate to other States in the Union where Suffrage was Universal, that thereby they might enjoy that most invaluable right. This was a mere figment of the fancy. It is admitted on all sides, that to obtain the qualification of a voter, the expenditure of a trifle in amount, would be all that was necessary. Yet, we are told that the persecuted citizens of this Commonwealth are migrating to other parts of the Union, to avoid this odious principle, and doing this at an expense too, much beyond what would be required to make them freeholders. Gentlemen deal in fanciful suggestions. He would venture to hazard the opinion, that no man that ever lived in that portion of the State from which he came, was ever

known to fly to other countries to avoid that or any other kind of political oppression. The idea was a new one, and he hoped it had sprung from the fruitful imagination of the gentleman. Let those who indulge in these fancies, enquire of such Virginians as may have emigrated to other States, what their opinions are upon this subject. Will they be found to revile Virginia with curses, because, while citizens here, they enjoyed not the Right of Suffrage? No. They would hold a very different language, and instead of complaints of tyranny and oppression, they would speak in terms of the profoundest veneration of her political institutions. Virginia had not so completely fallen from her high estate, as some gentlemen had been pleased to represent; and if she had suffered any deterioration, it did not result so much from her own councils as from those of another Government, which in many respects exercises a controul over her destinies. Is it because she, in common with the other Southern States, is labouring under a deplorable commercial depression, that we are called upon to abandon the old and established order of things, and look for an improvement of our condition from the future councils of the State Government? We may pull down this Government under this vain expectation, but he entertained serious apprehensions that we could not build up another which could long endure. No, Sir; the condition in which we find ourselves, has not arisen from, nor can it be improved by, the policy of the State Government, in the regulation of her internal and domestic concerns. It could not be effected by the introduction of Universal Suffrage, as intended by the proposition of the gentleman from Monongalia; for since, so few would be excluded, he felt himself justified in calling it Universal. He indulged a sanguine hope that the Committee was not prepared to adopt this bold innovation—he would say this dangerous experiment, fraught in his opinion, with mischief inconceivable. He said that he had listened with much attention to the gentleman from Loudoun, (Mr. Henderson,) who addressed the Committee yesterday. He had expected that that gentleman would have furnished some strong and conclusive arguments in support of that side of this question which he had espoused—he had been much disappointed, not because the gentleman did not possess the requisite talents and ingenuity to sustain himself with ability in the maintenance of any opinions he might advance, but he was disposed to ascribe his disappointment to the fact, that the subject did not admit of more conclusive arguments. This Committee no doubt would look at the facts according to that gentleman's own statement, uninfluenced by his eloquent effusions. And what are those facts? To substitute for the freeholder, a class of sixty thousand people, who are to controul the operations of a Government, in the correct and judicious administration of which the forty thousand freeholders, with the whole land of the Commonwealth in their hands, and of course possessed of all other species of property, in an amount greatly exceeding that held by the non-freeholders. In other words, the great landed interest is to be placed in the keeping of a majority of twenty thousand, who have no direct and immediate connection with it, and who even as it regards all other property, have an interest infinitely short of that which the freeholders possess. If this principle were introduced in a Government administered without the intervention of public agents, it would be neither more nor less than a pure democracy; and we have yet to learn whether, if introduced in our Government, it will not end in ruinous consequences. Gentlemen who advocate this extraordinary extension of the Right of Suffrage, are compelled to admit the necessity of fixing upon some limitation. Upon their own principles, they exclude three-fourths of the white population from the possession of any political power. According to their own favourite theory, we do not violate any existing rights by depositing this power where it can be safely lodged, in the hands of the freeholders—he said he was willing to accede to a proposition extending the Right of Suffrage, but it should rest upon, or be closely and intimately connected with, the ownership of land—that interest must be considered in any extension of the Right of Suffrage which would meet with his support.

The gentleman from Loudoun rests the claim of non-freeholders to the Right of Suffrage, upon the military services which they are called upon to render to the country. An apt reply has been already given to this pretension. Freeholders are called upon to render like military services, and in addition thereto, are required to furnish the "sinews of war." They fight by the side of non-freeholders in their country's battles, and almost exclusively furnish the pecuniary means of sustaining the Government in peace, as well as war. It would be a waste of time to detain the Committee longer, in discussing this subject, with a view to expose the extravagance of the scheme presented by the proposition under consideration. He would not refer to passing events of the day, in support of what he was about to say, but he would remind gentlemen that history did not furnish an example of a Government founded upon Universal Suffrage, that had not degenerated to a despotism.

A comparison had been made between the other States of this Union and this State, much to the disparagement of Virginia. It was not his intention to have passed any encomiums upon his native State. It did not become him to deal in empty

or substantial compliments on her institutions or her people. It should be left to others less interested, to pass judgment upon these matters—but he trusted he should be excused in expressing the opinion, that in most respects she could bear a comparison with any of her sister States. In what is she deficient? In what respect is she behind them? Are her people deficient in patriotism? Are they wanting in those virtues which ennoble man? Is she inferior to any of the States in moral character? In all these respects, he would say she stood pre-eminently high. With all the supposed defects in her character, he would be unwilling to exchange it for that of any other country—not even for that of the land of steady habits. Passing in review the whole Union, from Maine to its most Southern border, no cause of mortification would result from the comparison. Has she not produced a long line of Statesmen, and given birth to a galaxy of warriors, whose names she can proudly point to in refutation of this charge? Sir, in point of character, she yields nothing to her sister States, and for this character she is mainly indebted to those political institutions which it seems we are resolved shall give place to a new order of things; so far at least, as that can be effected by the adoption of the proposition offered by the gentleman from Monongalia.

We have been referred to France, by the gentleman from Loudoun, and have been told that the oppression on the part of the nobles and priesthood, had brought on the revolution in that country. We have no nobles here, neither have we any priesthood practising oppression upon the people. He was sure that no oppressions of that kind were practised in the Eastern part of the State. He had no personal knowledge of the actual state of things beyond the Blue Ridge, but he had always believed the people of that region of the State to be an honest, virtuous, and intelligent race of men, and as little disposed as any people upon earth, to submit to the sort of oppression spoken of by that gentleman. It is true that these oppressions did exist in that country, and did give rise to that revolution which was attended with such horrors and waste of human life. But, Sir, this very principle—this Universal Suffrage, had its full share in bringing upon that devoted country, the calamities to which it was exposed.

He was sensible that his observations were of an extremely desultory character. He had appeared before the Committee as he had before stated, unexpectedly to himself, and his principal object was to occupy a small portion of its time, that others who he knew could do greater justice to the subject, might have an opportunity of submitting their views. He was sorry that he had detained the Committee so long. He hoped the Committee would reject the proposition under consideration. If, however, the proposition could be modified or amended, so as to accord with his views, he would vote for it: otherwise, he could not. He was not disposed to trust to speculative theories. He begged leave, however, before he resumed his seat, to ask the Committee to advert to the manner in which our popular elections were conducted, and he would appeal to them if we were not placed in an enviable situation in that respect, compared to the condition of those States in the Union where Suffrage was more extended than in this. We hear nothing of those commotions in this State which frequently occur at the elections in other parts of the United States, where Universal Suffrage, or something approaching nearly to it, prevails. He had been for many years familiar with the manner in which the elections in this State had been conducted, as he supposed every other member of this body had been, and had no doubt he should be sustained by all, when he said that Virginia in this respect would bear an honorable comparison with any other part of the world. No popular elections were conducted with more respect for the laws, or could be conducted with more regard to decorum. If we add sixty thousand to the number of voters, we must necessarily change the mode of voting. He was attached to the *viva voce* manner of voting, because it was the most honest and manly mode. Extend the Right of Suffrage, and you must resort to the ballot-box: otherwise, these voters cannot act independently—they must have the means of concealing their votes. That change, as simple as it might appear to some, in his estimation, would let in a flood of fraud and corruption which would end in the destruction of every thing like honesty and independence in our elections.

Mr. Doddridge proposed that in taking the vote, the names of the Committee should be called over.

The Chair in reply, remarked, that it was not strictly in order, in Committee of the Whole, to call over names. He begged to make the suggestion, that the divisions on questions in Committee were to be regarded only in the light of comparisons of views; and when the names are announced, such is the pride of opinion, that members might be inclined afterwards to adhere to opinions, which they might have been disposed to change, but for their premature committal before the public eye. He merely made the suggestion. The Committee might take it for what it was worth.

The Chairman rose to put the question, when Mr. BAYLY addressed the Chair:

Mr. Chairman.—Before you put the question on the amendment, I wish to express my opinion in favor of extending the Right of Suffrage, which is now under consi-

deration. I am not in the habit of apologizing, when I consider it to be my duty to address this Committee, and I shall not do it now. I will say, that although I did intend to speak on the proposition now under discussion, at some other time, and expected that other gentlemen would have occupied your attention on this day; yet, as the question is about to be taken, and as my constituents are among the foremost in the call for this Convention, for the express wish of having the Right of Suffrage extended, I owe it to myself and to them, to give the reasons why I shall vote for the amendment of the gentleman from Monongalia.

In the year 1807, the people of Accomack petitioned the General Assembly to call a Convention, to extend the Right of Suffrage to other persons than freeholders, and to redress grievances existing under the Constitution. At that time, very few freeholders, in the other four counties, which I represent in part, wished for such a measure. But at this time, with the great change of public opinion that has taken place in these counties, and the almost unanimous wish of the freeholders of the county of Accomack, there can be no doubt, but a very large majority of the freeholders of the district, are in favor of extending the Right of Suffrage to others than land-holders.

When I was elected to this Convention, I considered it to be my duty to inform myself of the alterations and amendments to the existing Constitution, which the people in every part of the State demanded, and to correct these evils in the new Constitution. And when I shall frankly state to this Committee some of the great amendments in the Constitution, which my constituents wish us to make, and as I most cordially unite with them, in the hope, that those improvements will be made, I am not to be considered a leveller, a revolutionist, or a radical reformer: such a character does not belong to me, it is far from me. A sense of duty points to me, to pursue that course, which will lead to the correction of the evils complained of in every part of the State; which I hope and expect, will be so amended by the Constitution we shall submit to the people, that they will cheerfully ratify it.

If I thought that the adoption of this amendment would endanger the safety of property, or would put power in the hands of those, who would in any manner abuse it, I would not vote for the amendment, but would give it my most decided disapprobation. It may be dangerous, perhaps, where the non-freeholders are destitute of property and principle. Such is not the character nor condition of the people among whom I live, who were among the first to favor the extension of the Right of Suffrage, and are now so unanimous for it. It may be, that the peculiar situation of that people; the difficulty for all to acquire a freehold, and the denial of that right, to those who have a freehold less than twenty-five acres of land, may be a great cause in creating that unanimity, which at this time exists among them upon this question. They have not the facilities of acquiring freeholds, that exist in other parts of the State, to qualify themselves to be voters, where there is so much waste and useless land. If a man could by law vote in the county where he resides, upon the requisite freehold, situated in any other county in the State, he might purchase a freehold in the West, where the rocks and mountains cover half their counties, for one or two dollars.

Penned up in a peninsula, every one who wishes to obtain a vote, cannot realize that blessing under the present system, however much he may prize the privilege, whatever may be his standing or even his means. The territory is small, and the tracts of twenty-five acres, which are necessary to make the qualification, are not easily to be obtained at any price; but, although the qualification of electors are thus confined to the soil, the respectability of the inhabitants is not exclusively derived from that source. I have never believed, that the qualification ought to depend on the right in the soil. No such principle is believed to be correct among the people with whom I live. They do not draw their subsistence solely from the land. A great proportion of them are worthy mechanics, and many earn their bread by ploughing the ocean. It is not easy for such men, on their first entering into life, to lay up 2 or \$300, to purchase the requisite freehold, to qualify them to vote. However easily that might be obtained in other parts of the State, having vast mountains of worthless land, where fifty acres may be acquired by a week's labour, enterprize and industry cannot always be so soon rewarded in a dense population, where land is in great demand, and is of high value. I have never considered the possession of a freehold, as the best evidence and test of permanent and common interest with, and attachment to, the community. I believe, that many situations and circumstances in life furnish tests as certain.

The Bill of Rights declares, "that election of members to the General Assembly ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the Right of Suffrage." And yet so much has been said on the necessity of disfranchising the soldier! No such necessity applies to the Eastern Shore. There it is considered the sacred duty of all to protect their country against any invading enemy. During the two wars in which this country has been engaged, there were no exemptions, nor was there one example of

any man shrinking from his duty; all rushed to the post of danger the moment the alarm was given, poor and rich. The most aged was found quite as ready as the young. No man was then disqualified from the protection of the property of the freeholder; for, all showed that they had a common interest with, and attachment to, the community.

It is said, that the soldier cannot be trusted—the militia-man cannot be trusted, without he has a freehold. This is a doctrine which ought not to be entertained. Compare these objections—a more patriotic band of men never entered the army of Washington, than the 9th Virginia Continental Regiment—they fought by his side at Brandywine, Germantown, Trenton, Princeton and Monmouth, and their valor is well known to the venerable President of this Convention; and I rejoice that he has not forsaken the soldiers of the revolution, for they never have forsaken him. But, Sir, the independence of the country being obtained, they disband themselves and return home in beggary: and these men who have saved the Constitution of their country, by that very Constitution, are *expelled* from the polls to make way for some old tory: they have no *right* to be there, because *they have shewn no permanent interest in, and attachment to, the community.* Sir, this scene has occurred in every old county in the State, and in many is yearly witnessed. Such things roused the people to complain, and induced them to vote for a Convention—I mean the freeholders. They cannot, they will not believe, that such aged and virtuous men ought not to participate in the elective franchise, under the very Government that their valor established.

Is the proposition of the gentleman from Monongalia, a project of the non-freeholders? No, Sir; it is the wish of the freeholders themselves, to restore to the non-freeholders those rights which they ought always to have had. If 21,896 to 16,637, gives any expression of their will, they have said that they are desirous to abandon the distinction they now hold.

If this Government belongs to the freeholders, it is *they* who say we are willing to part with this exclusive power, and share it with our brethren. The freeholders possessing the Government, and the sovereignty being in the people, and the freeholders desire that the rest of their fellow-citizens shall be admitted to participate in political power—what good reason can, or has been assigned for this Convention to oppose that desire? It is not the non-freeholders merely: it is the freeholders themselves, who complain of the existing state of things. I have never heard the non-freeholders half so loud to call for this Convention, as the freeholders themselves.

It was from the most thickly settled part of the county of Accomack, and from those who reside near the Maryland line, that the demand to extend the Right of Suffrage was most earnest. Many of the freeholders have cut up their farms already into small tenements, to give to their sons the right of voting; so that they can lop off no more, without depriving themselves of that privilege. And those who reside in the north of the county, having a constant intercourse with the people of the State of Maryland, trading to their town, they become acquainted with their institutions, and they see how the extended Right of Suffrage operates there, and finding no evil resulting from it, consequently they are anxious for the change in their own State.

Farms are divided and sub-divided so often, that even that cannot be further done to any advantage, so as to leave a support to a family practising the greatest industry and frugality. The farm being now so small that it can only be given to one son, and generally the first born, he remains at home with his father—cultivates the land—supports him in his old age—and at his death inherits the freehold. The other sons are sent from home, generally to the towns in Maryland and Pennsylvania, to learn useful mechanical trades; they return, they will not leave the view of the smoke of their father's dwelling; the old man, perhaps, can cut off an acre of land from his little farm, or purchase one in the neighbourhood, on which is erected a ship yard or a blacksmith shop—these young men enter with great skill and industry on their trades, and very soon marry: these useful mechanics, having returned to your State, full of patriotic love for this Commonwealth, and as much attached to her interests as the freeholder. Yet, you are going to say to them, in the Constitution you are now making, “Young man, you have returned to your country, with a perfect knowledge of your useful profession, you are raising up a family of great promise to the welfare of Virginia, but you get your living by throwing the broad-axe, the sledge-hammer, or the saw, you cannot be trusted, you have not that attachment to your country as your oldest brother, who has remained at home, and followed the plough-handles; he must be trusted to vote for himself and you.”

Gentlemen say the non-freeholders do not wish this privilege to be extended to them. I know of no such description of men; and if there be many of that opinion in this ancient Commonwealth, they are fit subjects for a King. A free man who is willing to be governed by laws, and voluntarily prefers to relinquish to other men the authority to elect the Lawgiver, is a slave already, and he is not a fit member of a Republic.

Much has been said about confusion at elections. I do not believe, if we extend the Right of Suffrage as far as any of us wish, that there is danger on this score. Our people are not of that riotous character. I have never seen any confusion in that part of the country where I live, at elections. I have never seen nor heard of any confusion in any part of Virginia at elections. But reject this proposition, and let the old restrictions and disqualifications continue, and you will not be long without confusion, and great confusion, at the polls, and from the polls. You *must* show a disposition to *redress* the evils of which the people complain, or you must expect that their complaints will assume a louder tone. But suppose the people shall ever become corrupt, and their own worst enemies at elections, (I entertain no fear that they ever will,) and that riot and bloodshed should be the consequence. There is a remedy for this, and a simple one: it is to lay off the counties into small electoral districts, and you prevent all danger of riot; (and as a gentleman near me suggests,) let the elections be held on the same day in all the districts, and that will prevent large collections of people at one place, and consequently prevent confusion. No, Sir, there is no such danger. Have your people ever shown a disposition for insurrection? Have you ever seen or heard of a disposition among them to riot and insurrection? Have you ever seen or heard of a disposition among them to rise in arms against the General Government? although at times they have been so much excited against the administration of that Government. They can be trusted; they may with the utmost safety, even if you extend to them the utmost limits of the elective power, *be trusted*.

My worthy friend from Richmond, (Mr. Nicholas,) (and I use that expression only in reference to old and tried friends,) tells us about revolutionary France, and the evils which grew out of it, in that country. Much good has resulted to the people from that revolution. Why, Sir, it may have happened, that the heads of one or two contemptible nobles may have fallen into the sack of the executioner, brought on by their own vices and treason, but nobody lamented their fate. The people were bound down in chains, which the Government refused, not only to knock off, but to slacken: they were broken and torn asunder; and like the bursting of a volcano, desolated all around. But, is that the state of things here? Is there any monarch, or rich nobleman, to throw his gold among the people at our elections, to promote the utmost confusion and riot? Let us not take for our guide facts recorded by pensioned authors during the French revolution, and pretend that what has happened to that country and its institutions, will happen to our institutions, but rather take for authority the Whigs of *this* country. Jefferson saw the scenes at the commencement of the revolution; he was Minister of the United States to France. Was he the enemy of Universal Suffrage? No, Sir; on the contrary, the longer he lived, the more he was attached to it, even unto death.

Did the sight of the scenes of that revolution, even under Robespierre, cure the venerable gentleman from Loudoun, (Mr. Menroe,) he also was Minister to France, from his attachment to the rights of man? He has told you that there is nothing to fear from extending Suffrage in this country. Ours are a different kind of people, and on them I place all my confidence. They will not break out in mobs of sanguinary violence: they only ask their rights as freemen, and for this purpose the amendment is offered. I am desirous to know why it is that certain parts of the Commonwealth adjacent to other States where Suffrage is enjoyed to the fullest extent, are all in favor of this great change? I mean the freeholders in those districts. You see the South-West part of the State which joins Tennessee and Kentucky; the North-West which joins Ohio and Pennsylvania; and the North-East which joins Maryland, all anxious for this change. Can it be, that all the wisdom lies in the centre of the State? The people of those parts of the State to which I have referred, have witnessed and know how this thing operates upon their neighbours; and are, with very few exceptions, in favor of extending this right to freemen. The result of the trial is conclusive. We are not making an experiment, we are following those already made. Yes, the experiment is not to be made; the plan has been tried by other States; and the result is, that their population and prosperity has most rapidly increased, and they prove that man can govern himself.

The question of Internal Improvement in this State, has somehow got into this debate—how, I do not comprehend exactly. I am in favor of Internal Improvement to a limited extent, with the aid only of the fund set apart for that purpose; and my main reason for having gone with the West on the subject of their roads and division of counties, has been my pride—yes, Sir, my pride as a Virginian. I believe it is our interest and duty to hold out and to give every inducement to emigrants from the Northern States and from Europe, to settle that part of the country, and to retain our own population at home. We have seen Virginia fall from being the first State of the Union, to that of the third; and without great exertions on our part, she will fall still lower. I look to the West as my hope, to see her maintain her present station in these States. Extend the elective franchise, make your system of Government liberal and republican, and you will fill Western Virginia with inhabitants, and all

parts of your State with a more dense population. The Right of Suffrage has hitherto been confined to freeholders exclusively. Will any one give me a reason why it should be required of a voter for members of the General Assembly, when the same requisite is not demanded of those who fill the high departments of the State? Your Generals, your Governors, your Judges, your Treasurer, your Auditor, are not required to be freeholders. *They* are not required to possess this emblem of "permanent, common interest with, and attachment to, the community." That *evidence* is exacted alone from the native born citizen, the honest planter, when he goes to the polls. So also in the Federal Government. The President, the Senators, the Representatives, the Judges, and all others from them downward are placed in office, without enquiring whether they are freeholders or not. Can any man give a plausible reason, why a man is fit to fill all those high offices, and not fit to come to the polls? If you can trust men in all high offices without an interest in the soil, why cannot you trust a voter also, without that interest in the land? I will not reply to epithets that gentlemen have used on both sides—such as aristocrat, republican, &c. I may be called either: those who know me best, are republicans by acts and deeds, and *not* by words. They have confided their interest to me, and, I trust, it will not be abused. Make a Constitution that the people will gladly approve—redress all the evils complained of by the old Constitution, and you may call it aristocracy, oligarchy and every thing but a Republic; yet the people will ratify it.

In Virginia, epithets have lost their power: I will vote for such a Constitution as my constituents wish; nor will I concede to my friend from Richmond (Mr. Nicholas,) that he and those who are with him on this question, are the exclusive friends of the people; I know of no act they have done, which entitles them to use the phraseology, "*We the friends of the people.*" If his friend meant, that they were the friends of the freeholders, he will find that a majority of the freeholders are in favor of this change; and if he meant that they were the friends of the non-freeholders, I suspect that the friendship will not be accepted.

The gentleman has told you, that he was Attorney General for twenty years. Was this said to give his opinions greater weight with the community? I know the gentleman was Attorney General, and Virginia never had a better; and I know also, that I aided to put him there. At the age of twenty-two, I voted for the gentleman, (who was then about the same age,) and I have never repented for so doing, because I have never had cause for such repentance. At that time, I knew him only from report, which was strong in his favor; a young man of great expectations to them who knew him; but I had a stronger reason; he was the son of that old revolutionary and genuine Whig, Robert Carter Nicholas, Treasurer of Virginia; and a scion from that pure stock, might safely be trusted in any station he desired, for he would honor it. I cannot admit that he and those who act with him on this question, are the only friends of the people; if so, why did he cease to be the agent, the officer, the representative of the people, I will not say servant, I dislike the word? I trust my friend will excuse me, if I recommend to him to strike out all that part of his speech relating to Bank stock, lest his friends, the people, enquire what *office* he now holds.*

Another idea the gentleman suggested—perhaps I mistake him—I hope I do—I take no notes. He told the Committee, I think, that no reliance was to be placed on men, who hold Bank stock; that the man who holds Bank stock, is not to be trusted like a man who stands upon the soil. Sir, in that opinion I agree. Yes, Sir, I agree with the gentleman—the Bank stock-man may sell out to-day and be gone to-morrow; and a man who stands on his *own* land, is more entitled to confidence, than he whose estate is in Bank stock; a Bank stock-man is not a Virginia man. The Bank stock-man now, is not like the Bank stock-man when the old Constitution was made. The people, at that time, when they went to the Treasury, of which Robert Carter Nicholas held the key, received *hard* money and gold, and would be content even with cut money, bits and half bits. There was then in the Treasury the old English guinea, and the Spanish doubloon, half joes and pistoles. But now they are all gone, and with them, the golden American Eagle, with all its brood, has taken flight to a distant land. Go now to the Treasury, and what do you get? To be sure the paper currency is good now, but few there are who know how long it will be good.

Virginia before has had a paper currency; the old continental paper money was good, when first issued; and although it fell to nothing, the people even now keep it, venerate, and revere it, and think it a great blessing that it was made, and so it was: for it carried this Commonwealth triumphantly through the revolution, and thus rendered a blessing on the country. Not so with all the Bank paper—the *paper money* of the present day; for, some Bank paper has become so worthless, as to be of no other use than to be given to the children.

* Mr. Nicholas is President of the Farmers' Bank of Virginia. The money of the Treasury is kept in that Bank and in the Bank of Virginia.

I know the time has been when the people of the United States might be caught by names, and, if my friend from Richmond will take it in good humour, I would request him and his associates, if ever they should happen to be put upon a Central Committee, and should send printed tickets to some remote parts of the State upon the supposition that the people could not write, not to head the tickets the "People's Ticket," the "American System," "Internal Improvements," "Rail Roads;" for it will give their friends trouble to cut such trash off. For, I can assure him, that in some parts of the State, this will be absolutely necessary. Such titles are mere chaff. The people are not now to be deceived by names any longer, nor prevailed on to agree to a restriction of the Right of Suffrage to the freehold. You may christen the new Constitution by whatever name you will; if you do not liberally extend the Right of Suffrage, and reform other great abuses which has got into the Government under the old Constitution, they will not vote for the new Constitution, but will have another Convention, which will do what this Convention *ought* to do.

Another cause of dissatisfaction, is the personal labour exacted of the non-freeholders, in making and repairing the roads of the Commonwealth. My constituents do not of themselves complain of the labour, for it is scarcely felt in the county: the roads there are kept in repair by one day's labour in the year, and are the best roads in the State; but their complaint is of the principle. You exclude them from the polls, and you compel them to labour on the road, against the wish of 21,896 freeholders, who voted for a call of this Convention, to 16,637, who voted to continue this oppressive system; and if you send a Constitution to the people with such oppression not redressed, how long do you expect the people will suffer them to remain so? You have to insert a clause in the Constitution you are now making, providing for the mode and power of future amendments. After that, is it expected that this odious restriction of the Right of Suffrage will remain in the Constitution three years? And if you do not engraft such a provision as to amendments, you will have another Convention in less than three years. Sir, is it not wise—is it not politic—to give up something to the feelings and wishes of the people—and if you please so to call it, even to their prejudices and ignorance? And he is an unwise statesman who does not consult even the prejudices of the people of this country. We are here for that very purpose to consult their wishes and opinions, and make a Constitution accordingly. It is not expected that we can make the best Constitution that can be made, but it is expected that we shall make such a one as our constituents wish, and is suited to the times and to them, to the end that they shall be prosperous and happy under it. We have only to make the changes which are asked for by our sovereigns, the people, and they will be grateful, and we shall be honoured with their approbation. Mr. Chairman, I have a very great desire that the amendment of the gentleman from Monongalia should prevail. It will be like oil thrown on the troubled ocean. It will calm the agitation of the public mind, which is now so alarming. I hope this debate will be extended. I wish to hear what the people of every part of the State think and wish upon this subject. There are gentlemen in this Committee, who are not accustomed to speak, but have the strongest intellect. I think it is their duty to cast light upon this question, and state particularly the wishes of the people with whom they live. I have endeavoured to discharge this duty, although not to my satisfaction. I have heard eloquence, and great eloquence in this House. But there is in this Assembly, another class of members, besides the eloquent speakers. I refer to the silent members, who, I believe, know more what the people wish upon this occasion, and feel more for what the people complain of, than the eloquent gentlemen who have so often occupied the floor. To them I look with hope, and I trust I shall not look in vain. I repeat my desire that the debate should be continued.

Mr. M'Coy said, that under the present state of things he would not vote for this amendment. He would not say he would not vote for it under another state of things. It would depend upon what basis of Representation would be adopted. If the white population should be taken, he would be willing to restrict the Right of Suffrage; but if the basis of property be taken, then he would be willing to extend the right of voting to more persons, for the purpose of balancing that influence of wealth which might be infused into our system. He made this remark to obviate any charge of inconsistency which might be hereafter brought against him.

Mr. Scott asked, what would be the condition of any who have the qualification, if they have not paid their tax. If he who has the property, and is assessed, should be returned on the pay books as delinquent, will he not be entitled to vote? If the man who is not assessed in any property may vote, will not the man who is assessed, but who has not paid his tax, be entitled to his vote?

Mr. Wilson said, it was his intention to include those who were not assessed for any tax, provided they were not subject to any of the disqualifications which were specified. But as to the man who has property, and is fairly assessed, yet refuses to pay, he evinces such a disregard for the community, that he ought to be excluded from the privilege of giving his vote.

MR. MORGAN of Monongalia, then rose and addressed the Committee as follows:

MR. Chairman: Before the question be put to the Committee, I wish to submit a few remarks in favor of the adoption of the amendment now under consideration.

The subject is very properly deemed by every member of this body, one of great importance. It involves the sovereign rights of the people—rights too, which when restrained, ought to be restrained with great care. We are told by able writers on the subject, that the right of voting in the appointment of Legislators, is a sovereign right, and one of the first importance in free Governments. It is a sovereign right, and must be so considered here. I presume then, Sir, that it can only be abridged so far as shall be necessary for the public safety and the public good. And our inquiry is, how far can this right be safely extended? or what is a proper restraint upon it? We all agree that good Government depends very much upon the determination of this question.

I believe, Sir, that the very best form of Government for the promotion of human happiness and safety, is dictated by the natural love of liberty and equality, implanted in every human heart; and in every act of mine upon this floor, I shall be guided by this notion. I shall pursue that course which I think best calculated to secure the enjoyment of the greatest possible portion of the rights of man to the people of this Commonwealth. Government is, or ought to be instituted, not for the restraint of those rights, but for their security and enlargement. We are not to look for man by himself in the forest, but in society, where he can only be found. He is a social being by nature—he was made to live in society, and cannot live without it. In my humble judgment, (which, however, I do not presume to put in competition with the judgment of this body,) society may be so ordered as to enable man to enjoy all his natural rights, in a much more perfect and ample manner, than he can possibly do alone, in the unbroken forest.

In the few remarks which I propose submitting for the consideration of the Committee, I shall endeavor to argue from facts to conclusions, and not by mere declamation, as I think was the course of the gentleman who preceded me in opposition to the amendment of my colleague, (Mr. Wilson.) It is from facts we are to look for correct conclusions, and I know of no better course of reasoning on the affairs of Government, than to look into facts and circumstances connected with other Governments, similar to those in our own, and the effects, and to conclude that similar facts and circumstances here, would produce similar effects.

The gentleman of the city of Richmond, (Mr. Nicholas,) on yesterday, from his course of declamation, came to the conclusion, that non-freeholders could not love Virginia. His principal argument consisted in the fact, that the holder of Bank stock in this city might go to the office, transfer his stock, and in a few hours have himself conveyed to the State of Maryland. I pray you, Sir, cannot the land-holder do the same, by going to another office, (the clerk's office,) and there transfer his land? This sovereign right never can, or ought to depend upon the ease or facility of the mere alienation of property. No, Sir, it must depend upon higher considerations.

The gentleman across the way, (Mr. Trezvant,) seems alarmed at the amendment, because it contains what he calls *Universal Suffrage*. I would call it General Suffrage. It is possible, however, that his objections have been induced by an intimate acquaintance with the improper exercise of the Right of Suffrage by free negroes in the elections in North Carolina. I believe the gentleman resides near that State. Or, perhaps his argument is drawn from the fact, which he has given the Committee, that some gentleman of his acquaintance, raised in Virginia, who removed to some of the Western States, where the Suffrage may be said to be general, resided there several years, again saw the gentleman, and told him that he still loved Virginia: *ergo*, the Right of Suffrage as fixed by the Constitution of Virginia, is the very best in the world! This may be a conclusive argument with that gentleman; it is not with me. Before I enter upon the argument, it will be proper to observe to the Committee, that I had the honor a few days ago of laying upon the table a scheme for the regulation of the Right of Suffrage, differing somewhat from the one now under consideration. It requires the citizenship of every free white man, and one year's residence in his county, city, or borough, and the payment of all taxes or levies, levied upon him the two years next preceding the one in which he proposes to vote; and also, that a tax of twenty-five cents shall be levied on every free white man, to be collected and paid into the public treasury. All such citizens, having so paid their taxes, would be entitled to vote. It also requires that a portion of the property-taxes equal to the whole amount of the taxes so required to be collected and paid in, shall be set apart, and these two sums annually appropriated and vested in the permanent Literary Fund, for purposes of education. The amendment now under consideration requires two years' residence in the State, and one in the county, city, or borough, and the payment of all taxes and levies, levied on all such free white men within the year next preceding the time of election, as a qualification. It requires no specific tax to be levied, but the payment of those which shall be levied. This amendment meets my ap-

probation as fully as my own, except as to the subject of education. It is, perhaps, as great an extension as we may now expect to get.

It is possible, Mr. Chairman, that I shall not call up for consideration that part of my scheme which relates to education. I have seen too much opposition already expressed by several gentlemen (in the discussion of another question) to the establishment of any system of general instruction, and I presume it would be useless to urge my views on the consideration of the Committee. We have heard expressed the fears and objections of the gentleman from Chesterfield, (Mr. Leigh,) the gentleman from Spotsylvania, (Mr. Stanard,) and other gentlemen too, Sir; which fears and objections seem to be, that some system may be adopted to tax the people of the East, for the education of the children of the West. I believe, Sir, I am not mistaken in saying that at least two of these gentlemen were educated at William and Mary, an institution which had authority, and did tax the buck-skins, and the pelts of the beavers and otters taken by the Western hunters, through the medium of the surveyors' fees. Yet they fear that the East will be taxed for the benefit of the West.

I will, however, state to the Committee, that it can be demonstrated by documents to be relied on, that the plan which I had the honor of proposing, (if adopted,) would at the end of twenty years, furnish the means of giving five years education to every free white child, born in the Commonwealth of Virginia; and as well, Sir, to those of the Eastern part of the Old Dominion, as to those of the West. Yes, Sir, to all! And whatever other gentlemen may think upon this subject, I think even that would render more substantial benefit to the people, than all we have done; (indeed, we have done nothing,) I may say, more than all we can now possibly expect to do. But it must be abandoned for the present.

This brings me, Mr. Chairman, to the question before us, and as I have before said, I will endeavour to argue from facts to conclusions.

The proposition now under consideration, justifies an enquiry into the state of the Government; and I believe, it will be found to be aristocratical in its principles. If you agree that an aristocracy is properly defined to be a Government of the few over the many, and that those few hold their authority by virtue of their estates, I can prove that our Government is an aristocracy, or at least aristocratical in its nature and principles. If it shall be found, that the powers of the Government are in the hands of the few, to the exclusion of the many, and these few are to be ascertained and known by the estates they hold, surely it must be aristocratical in its nature. And I venture to say, that such is the situation of the Government of Virginia, at this time.

In 1828, when the election was before the people, to determine whether they would call this Convention or not, thirty-eight thousand five hundred and thirty-three votes were given, and returned from the whole State, (20,275 East of the Blue Ridge, and 18,258 West.) And here, Sir, I must beg leave to correct some of the very erroneous calculations of the gentleman from Spotsylvania, made a few days ago, in the discussion of the question upon the basis of Representation. The gentleman's calculations were taken from the argument of the gentleman from Augusta, whose argument was founded upon documents furnished by the Auditor, known by every person here to be inaccurate, fallacious, and not to be depended upon. These documents purport to exhibit the number of freehold-estates in the Commonwealth, which will authorise voters. It must be recollected, that they included all such estates, whether held by men, women, children, foreigners, or even free negroes, if any such persons have freeholds. But not only so, each person's freehold in every county is counted; so that the same man is counted once for his freehold, or freeholds, in each county. Many men are counted three, four, and five times, and some, perhaps, oftener. It is very common, particularly in the Eastern part of the State, for gentlemen to have freeholds in many counties, but not so frequent in the West. But this is not all. In several of the Western counties, a few years ago, large quantities of lands were returned delinquent for the non-payment of taxes, and sold. Most of these lands now belong to the Literary Fund. They do not appear on the commissioners' books; and, consequently, were not reported by the Auditor. These documents are not to be relied on, I can assure you.

I give you better proof: I offer you the freeholders themselves when called to the polls, and not at one time, but several times, when all felt an interest, and when nearly all attended. I offer you the list of votes from all the counties, cities, and boroughs, both from the East and from the West. It is known that every voter did not attend, but more, I presume, were prevented from attending in the West, than in the East. There were circumstances in that country to prevent their attendance, which did not operate here. In some of the large counties, where there were no district elections, some were prevented from attending the polls by intervening mountains and water-courses; and even where there were districts, all who failed to attend on the first day, were compelled afterwards to go to the court-houses; for the law only required the polls to be kept open after the first day, at the court-houses during court days. Those difficulties were not much felt in this part of the State.

I can assure you, that the votes were taken, and the polls examined with great care, and I doubt whether the vote of any non-freeholder, ever reached the Executive Chamber. The judges qualified to take votes and purge the polls were vigilant, and performed their duty with the utmost strictness, so far as I have been informed. Indeed, they were, of all men in the Commonwealth, the last to permit improper votes to be counted; for it must be recollected that these gentlemen, (the county court clerks, sheriffs and commissioners of the revenue,) had but little feeling or desire for the formation of a Convention. They did their duty fully and amply.

The number of freehold-voters in the State, may be estimated at 45,000, and not more. I shall consider them as of that number. From the free white population of 1820, and the hypothetical increase since that time, there are now in the State more than 140,000 free white male citizens over 21 years of age. Deduct from this number the voters, and you find 95,000 free white men excluded from the polls. But, Sir, deduct from this last number, 5, 10, or if you please, 15,000 for paupers and others who ought to be excluded, and you still have 80,000; leaving the Government in the hands of little more than one third of the people. I am then justified in saying that the Government is in the hands of the few; that it is held and exercised by that few, who hold it by virtue of their freehold estates. I ask you, now Sir, if our Government be not to some extent aristocratical in its form? It is so considered by some men of great wisdom, and I believe generally by the people of the other States of this Union. Are we to close our eyes to these facts? or are we to consider them as having some influence on our deliberations? Sir, we ought to consider them.

When I use this argument to prove the aristocratical principles of our Government, I do it with due respect to the opinions of all the members of this body, and also, with due respect to the freeholders who sent me here; whose opinions and interests I wish to represent. But, Sir, from these facts, I must contend that the Right of Suffrage ought greatly to be extended. The freehold Suffrage is contrary to the genius of our people; and I may well say, contrary to the genius of the people of all these United States. Is it not unwise to contend for a principle so much opposed to the will of the great body of the people?

I shall now attempt to shew that the freehold Right of Suffrage is contrary to the genius of the American people. In doing this, I will introduce, for the consideration of the Committee, a general analysis of the regulations on the Right of Suffrage in each of the States of this Union, which will develop some curious facts, and correct some improper impressions made on the public mind on this subject. And although it may be tedious and uninteresting to the Committee, yet some valuable lessons and correct conclusions may be drawn from a careful examination of all the provisions in the several States on this subject. I know that the Constitutions of other States will not be received as conclusive evidence to convince the Committee of the propriety of adopting the principle for which I contend, nor, indeed, do I presume they will have much weight here. But, Sir, these Constitutions are looked to by the people, and are respected by them. They will have some weight, in shewing that the principle of General Suffrage is neither new nor dangerous.

I proceed, Mr. Chairman, with the twelve slave-holding States, as they are called:

Missouri.—Every free white male citizen of the United States, 21 years of age, who shall have resided one year in the State, and three months in the county or district, shall be deemed a qualified voter, except soldiers, seamen or marines.

Alabama.—Every male person of the age of 21 years, being a citizen of the United States, and who shall have resided in the State one year, and in the county, city or town, three months, shall be deemed a qualified elector, except soldiers, seamen or marines.

Mississippi.—Every free white male person of the age of 21 years, being a citizen of the United States, and having resided in the State one year, and the last six months in the county, city, or town, where he offers to vote, being enrolled in the militia, (if not exempted,) or having paid a State or county tax, shall be deemed a qualified voter.

Louisiana.—Every free white male citizen of the United States, who at the time being, hath attained the age of 21 years, and resided in the county in which he offers to vote, one year next preceding the election, and who, in the last six months, has paid a State tax, shall enjoy the right of an elector; and every such citizen who shall have purchased lands from the United States, shall have the right of voting, when he shall have the other qualifications of age and residence.

Kentucky.—Every free male citizen, (negroes, mulattoes, and indians, excepted,) who at the time being, hath attained to the age of 21 years, and resided in the State two years, and the county or town he offers to vote, one year next preceding the election, shall enjoy the right of an elector.

Tennessee.—Every free man of the age of 21 years and upwards, possessing a freehold in the county wherein he may vote, and being an inhabitant of the State; and every free man being an inhabitant of any one county in the State six months, immediately preceding the day of election, shall be entitled to vote.

Georgia.—The electors of members of the General Assembly shall be citizens and inhabitants of the State, and shall have attained the age of 21 years, and have paid all taxes which may have been required of them, and which they may have had an opportunity of paying agreeable to law for the year preceding the election, and who shall have resided six months within the county.

South Carolina.—By the old Constitution, the Right of Suffrage was confined to free white males 21 years of age, possessed of freeholds in 50 acres of land, or town lots, and such of them as paid two shillings sterling of taxes the year before the election. But by the amended Constitution:

Every free white man of the age of twenty-one years, (paupers and soldiers of the United States excepted,) being a citizen of the State, and having resided therein two years previous to the election, and who hath a freehold of fifty acres of land, or a town lot, of which he hath been seised or possessed six months before the election; *or not having such freehold or town lot*, hath been a resident in the election district in which he offers to vote, six months before the election, shall have a right to vote.

North Carolina.—All free men of twenty-one years of age, having been possessed of a freehold estate in fifty acres of land for six months, and having resided twelve months in the county, may vote for Senators—and all free men of the age of twenty-one, who have been inhabitants of any one county twelve months, and shall have paid public taxes, shall be entitled to vote for Commons. It is nearly the same in towns having separate representation.

Maryland.—By her old Constitution, *all free men* above twenty-one years of age, having freeholds of fifty acres of land, or thirty pounds value of any property, and having resided one year in any one county, were authorised to vote. But by the amendment of 1802, every free white male citizen of the State (and no others) above the age of twenty-one years, having resided one year in any county, or the city of Baltimore, or Annapolis before the election, shall have the Right of Suffrage.

Delaware.—Every white free man of the age of twenty-one years, having resided in the State two years next before the election, and within that time paid a State or county tax which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of those so qualified, between the ages of twenty-one and twenty-two, may vote without having paid a tax.

Virginia we know is freehold.

From the Constitutions of these twelve slave-holding States, the various facts will be discovered, that six of them require fixed times of age and residence of their male citizens, as the only qualifications of electors; four require the payment of some kind of taxes in addition to age and residence; and only two require a freehold qualification: these two are Virginia, and North Carolina in the Senate.

I will not detain the Committee in giving a full analysis of the Constitutions of the non-slave-holding States, but will merely submit this statement, shewing that six of them require age and residence as qualifications, and that the other six require the payment of some kind of taxes.

States which require particular terms of age and residence as qualifications of electors:

Slave-holding.

Missouri,
Alabama,
Kentucky,
Tennessee,
South Carolina,
Maryland—6.

States which require the payment of taxes in addition to age and residence:

Mississippi,
Louisiana,
Georgia,
Delaware—4.

Non-slave-holding.

Illinois,
Indiana,
Maine,
New Hampshire,
Vermont,
Rhode Island—6.

States which require freehold estates in addition to age and residence:

Virginia,
North Carolina—2

12

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Now, Sir, I have presented for your consideration twelve States of this Union, in which the Right of Suffrage is extended generally, to all the free white male citizens of twenty-one years of age. Some of them, but not all, have excluded paupers, soldiers and seamen; and some have not even excluded free negroes. Six of them, like Virginia, hold slaves, and six do not. I have also presented you with ten States, which require the payment of taxes in addition to the qualifications of age and residence—

four of them slave-holding, and six not. South Carolina, Maryland, Massachusetts and New York, have changed their former Constitutions in this particular, and have abandoned the freehold qualification, except as to free negroes, in New York. The Constitution of that State authorises free negroes, being male citizens of that State, of full age, who hold estates of freehold, of the value of \$250, clear of debts and incumbrances, and who shall have paid taxes on their estates, to vote. But, I have heard that the Legislature refused to tax these freeholds, and thereby deprived the owners of voting. There is an express provision in the Constitution, that no free negro's real estate under the value of \$250, shall be taxed; so that no man is taxed in that State without representation. I believe, Mr. Chairman, from these facts, I may conclude that the freehold Right of Suffrage is contrary to the genius of the people of the present age, and the Republican institutions of the United States.

If any confidence can be placed in the people of the United States, (and I presume there can be some) so far as example and precedent taken from them can have any influence on our deliberations, that influence is in favour of an extension, even beyond the amendment of my colleague. The example of these States has a very powerful influence on the people of Virginia, I am well assured. My residence is near Pennsylvania and Ohio; and I see and know the influence of those States, and their institutions, over the people of the Western part of this State. They see and know the benefits of General Suffrage on society—they approve, they desired a change. And, Sir, look around you; and you find members on this floor from the Tennessee line, round to that of Maryland, who advocate the same principles for which I contend. But to the South, on the North Carolina line, we meet with opposition.

The gentleman over the way, (Mr. Trezvant,) has told us that every Republican Government in the world, where *Universal Suffrage* was instituted, has gone to ruin and perdition. Now, Sir, I would like the gentleman to name the Government to which he refers us, that we may know the force of his precedents. I shew him twelve Republican Governments where suffrage, although not *Universal*, is very general, which have not yet gone to ruin.

[Here Mr. Trezvant remarked that his reference was to the ancient Republics of Greece and Rome, where Suffrage became Universal.]

Then, Mr. Chairman, the gentleman's cases are not in point, and cannot, therefore, be considered as having any influence on the question. It is not necessary to discuss them. They were either democratic or very imperfect Republics, and their history shews that they are not examples for us. Sir, we must look to our sister States, whose history we know, and whose example we feel. They sustain us: and we are sustained in our principles by the opinions of some of the best and wisest men of our own country—men whose names will go down to posterity when many of us will be forgotten. We are not contending for a wild and untried scheme. No! It is one founded on the eternal principles of liberty and equality, which must characterize every good Republican Government which now is, or which ever can be.

But there is another objection. Those who pay no taxes are unworthy of the privilege of voting. It must be observed that taxes may be imposed in various ways, and services may be required instead of the payment of money, for the support of Government. Every thing contributed for the support of any branch of the affairs or concerns of Government, may be legitimately considered as part of the taxes; and it is a curious fact, that the taxes and services imposed on the people of Virginia, have been so arranged, that the greatest burthens have been put upon those who do not vote. Yes, Sir, I say that those who do not vote, are burthened greatly beyond what is right, and even more than is generally imagined. On a former occasion I attempted to shew, and did shew, that such is the fact.

This scheme of taxation is effected by authorising those one hundred and nine little Governments spread over the whole territory of the State, (the county, city and borough court,) to levy taxes to any amount. It is true they levy on voters, as well as those who are not; but it is a capitation tax, and very frequently far exceeds the whole revenue levied upon all the property of the counties. Look to all the items of county taxes and county services—military duty—labour on the public roads—county levies for various purposes—poor levies, (the poor supporting the poor,) and patrols in the counties. Add all these little items together, and it will be found that they make large sums—that they are very important contributions to the Government, and highly necessary for its good being. The voters pay in general the same; but the number of those who do not vote, so far exceeds them, that the whole contribution of the non-voters, is even greater than that of the voters.

A few days ago we were told that wealth and political power could not be divorced; that capital and labour could not be separated; and that labour must be represented. Yet, Sir, on the present occasion, we find that labour is only to be represented by the votes of *freehold-labourers*; and the whole power of the Government is to be placed at the control of the capital of the country, if possible. It is not for me, however, to reconcile these inconsistencies in gentlemen's arguments. I hesitate not to say, that

those sixty or eighty thousand persons, to whom it is proposed to extend the Right of Suffrage, constitute the great mass of actual productive labourers of the State. Mr. Chairman, I believe it cannot be otherwise.

We have been told that we shall have a war of the poor against the rich, and that the right of property will be destroyed, if the amendment be adopted. It is not so, and no man can or ought to believe it. If the people of the East, West or South, have given us examples worthy of our imitation, we can fear no such thing. There has been no instance of war upon property in any of our sister States. It is just as secure in them as in Virginia. There is more of it in the North—greater estates, and perhaps more of them than here. There is a greater distance between the rich and the poor, and yet the poor is in a better condition than they are with us. Sir, we can find nothing like physical rapine in any of the States where General Suffrage has been adopted. All live in peace, happiness, prosperity and tranquillity, and every man is secure in his own person and property, under his own roof.

It has been argued, that General Suffrage has a tendency to bring together the rich and the poor, and that the one will have means, and be able to buy up the other, to the prejudice of the liberty of the people. This argument always comes from those who advocate the power of the few over the many. Yes, Sir, from the real aristocracy of the country. It is an argument to be found in nearly all the treatises of theoretical writers, who support aristocracies. The object is to alarm the people with fear that the poor will be bought, and made engines of their own ruin. It is only for purposes of alarm, and is not true. If the Constitution shall require of electors, the payment of a small tax just before elections, there will be a possibility of an improper influence, if there can be candidates corrupt enough to buy, having the means to buy, and voters base enough to sell their votes. But I know of no case of corruption, in any of the States, having such a qualification. Cases of mere suspicion, perhaps, have occurred. If the payment of taxes be made a qualification, they ought not to be required immediately before the election, but some one or two years preceding, at a time when they cannot be paid with a view to any particular election. But, Sir, I would not tax a man merely to qualify him to vote, although it may be proper, in this way, to require a man justly and honestly to pay the public demands. All free men ought to vote, because they are free men. Then they will act independently. Such men can never be purchased by the cash of candidates, or the power of demagogues. No, the poor will be as independent in their opinions, as the greatest land-holders of the State.

There is one other argument which ought to have some influence on this question. It is one of delicacy, and I will say but little upon the subject of this argument; however, I will say something. We find that all the slave-holding States South of us, deemed it of the utmost importance to make all the free white men as free and independent, as Government could make them: and why? Sir, it is known that all the slave-holding States are fast approaching a crisis truly alarming: a time when free-men will be needed—when every man must be at his post. Do we not see the peculiar condition of society? Yes, all see, all feel, and all lament the approach of the crisis before us. It must be in the contemplation of gentlemen, who presume to look upon the progress of events, that the time is not far distant, when not only Virginia, but all the Southern States, must be essentially military; and will have military Governments! It will be so! We are going to such a state of things as fast as time can move. The youth will not only be taught in the arts and sciences, but they will be trained to arms—they must be found at every moment in arms—they must be ready to serve their country in the hour of peril and of danger. Is it not wise now, to call together at least every free white human being, and unite them in the same common interest and Government? Surely it is. Let us give no reason for any to stand back, or refuse their service in the common cause of their country. These considerations had their influence on the Southern States, when forming their Constitutions, I doubt not; and ought to have great influence with us.

I would ask, Mr. Chairman, where are the evils to be apprehended from General Suffrage? I have been unable to find them. It is true, we have been told that it produces mobs, confusion, and turmoil at the polls. Turn your eyes upon all the States of this Union, and let me ask for the evidence of these mobs and turmoils? Look to the South, and have you heard of them? No! Look to the West, and do you find them there? No! Look to the North, and do you see them even there? No! They are no where to be found except in large towns and cities, where it is perfectly well known, that restraint on the Right of Suffrage, has no influence over them whatever.

Where many thousands of persons are brought together upon election days, there will be disputes, and sometimes turmoils. But no danger to the public safety need be apprehended in mere disputes in the choice of public officers. These disputes only serve to show that the body politic is in a good and healthy condition; that it has energy and power. It is not like the cold calm of perfect aristocracy or despotism, where few men dare express opinions on the public affairs. No, Sir; all are at liberty, and all are free to discuss the affairs of Government. I fear not mobs or turmoils in

Virginia; and none who are at all conversant with elections in Pennsylvania and other States, where Suffrage is general, can fear them. Those States are generally divided in small election districts, so that few persons are brought together. Why not do as they have? Our counties may be districted; and even a less number of persons brought to the polls at a single place, than now is, under the existing Constitution. This is the best remedy against mobs or turmoils.

I must conclude my remarks, Mr. Chairman, by telling you, that from the facts which I have laid before the Committee, we may safely argue that there is no danger of rapine or robbery by the poor upon the rich; nor of mobs, turmoils, ruin or despotism; nor indeed, of the Government getting in the hands of demagogues. I have a sanguine hope that the Convention will extend the Right of Suffrage generally; that the people will accept it, and that if it shall at any time be found inconvenient or improper, that they will change it. Several States, as I have said, have abandoned the freehold Suffrage, and all are doing well; all are happy and prosperous. Virginia can do the same, and the effects will be similar.

I beg the Committee not to consider that we advocate a mere wild and untried scheme. But on the contrary be assured, that we in good faith, advocate what we deem to be the sacred rights of the people. We do it to promote the happiness and welfare of our country.

Mr. Wilson now modified his amendment, so as to require that the taxes should have been demanded of the voter before he was rejected for not having paid them.

The question was then taken and decided in the negative: Ayes 37, Noes 53. (Messrs. Madison, Monroe and Marshall, voting in the negative.)

So the amendment of Mr. Wilson was rejected.

Mr. Campbell of Brooke, then offered the following amendment as a substitute for the 3d resolution reported by the Committee:

1. *Resolved*, That all persons now by law possessed of the Right of Suffrage, have sufficient evidence of permanent common interest with, and attachment to, the community, and have the Right of Suffrage.

2. *Resolved*, That all free white males of twenty-two years of age, born within this Commonwealth, and resident therein, have sufficient evidence of permanent common interest with, and attachment to the community, and have the Right of Suffrage.

3. *Resolved*, That every free white male of twenty-one years of age, a citizen of the United States, not included in the two preceding resolutions, who is now a resident, or who may hereafter become a resident within this Commonwealth, who is desirous of having the rights of a citizen, in this Commonwealth, shall, in open court, in the county in which he resides, as may be prescribed by law, make a declaration of his intentions to become a permanent resident in this State: and if such person shall, twelve months after making such declaration, solemnly promise to submit to, and support the Government of this Commonwealth, such person, shall be considered as having permanent common interest with, and attachment to, the community, and shall have the Right of Suffrage.

4. *Resolved*, That all persons, except such as shall have rendered important services to their country; all persons of unsound mind, and all persons convicted of any high crime or misdemeanor against this Commonwealth, possessing whatever qualification they may, shall not be permitted to exercise the Right of Suffrage in this Commonwealth.

MR. CAMPBELL then addressed the Committee as follows:

Mr. Chairman,—If I had been asked what in the reason and nature of things, would have first demanded and occupied the attention of this Convention, I would have answered in accordance with *reason*, as I think that the first question to be discussed is, *who shall be a citizen of this Commonwealth?* The next question, embracing the very basis of Government, would have been; *what shall be the privileges and duties of a citizen of this Commonwealth?* On these two questions, as I think, Sir, depends the whole system of Government. These questions correctly decided, and the frame of our Government would have been reared. I would call the attention of this Committee, Sir, to the propriety of the *term* citizen; I need not inform you, Sir, nor any gentleman present, that the term inhabitant, is not equivalent to the term *citizen*. Every citizen is an inhabitant, but every inhabitant is not a citizen of Virginia. They are not convertible terms. In Great Britain, every person is a subject of the King. Every person from the Duke of York, down to the most obscure native of the British Isles, is a subject of his Majesty the King of Great Britain. It is so in all Monarchical Governments. We have repudiated that term in these United States, and we have consecrated the term citizen. But, Sir, though we admire the term, and in a sort of complimentary way, address all men as citizen, we do not in fact, recognize all men as citizen. In Virginia, we have comparatively few citizens. What, let me ask, Sir, does the term fairly import? A citizen is a freeman, who has a voice in the Government under which he lives, who has the privilege of being heard in the councils of his

country, by his agent, or representative. No disfranchised man is a citizen. He may be an inhabitant, alien, or what you please, but without a vote he cannot be a citizen.

But, Sir, I have long thought, and I am more fully convinced from the debates which I have heard in this House, that the science of politics, and the science of Government, are yet in progress. We have not yet attained to perfection. Very far from it, Sir. Man in society, is capable of much greater enjoyment than any Government on earth has as yet afforded him. I allude, Sir, to the social enjoyments, which directly, or indirectly, flow from Government, and which every good and wise Government ought to aim at producing. The Constitution of Virginia, is the result of all the discoveries and improvements of nearly six thousand years. Yes, Sir, the present Constitution was the result of all the improvements in the science of Government in the history of the world; *perfect or imperfect*, it was the best the world ever saw, till the year 1776. But how much more light have we attained in the science of politics since? So much at least, as to authorise us to say, that that instrument is by no means perfect.

But, Sir, the great error of mankind, and the common error of all ages, has been, to suppose that all reformations are perfect, or so nearly, as to admit of little or no amendment. It is equally true in religion and politics. We have had both sorts of reforms. After many ages of darkness and superstition, two men arose called Reformers; and they achieved what has been called a great reformation. But while Luther and Calvin effected much, and laid the foundation of a real reformation, their successors and admirers considered their work perfect, and pushed their enquiries no farther. Since then, Sir, during an interval of three hundred years, their adherents have not advanced an inch. So in politics. Some fifty or sixty years ago, many distinguished men, deservedly called reformists, arose in the political world. They carried their views of reform to a very considerable extent, and not only laid the foundation, but actually accomplished a very great reformation in Government. Those illustrious fathers of the American Revolution, and founders of these Republics, are entitled to the admiration and gratitude of all the friends of the rights of man. But it was not to be expected that these sages, great and wise, and good, as they were, could have perfectly emerged out of the political darkness and errors, consecrated by the prescriptions of the monarchies of the old world for thousands of years.

We are wont to admire antiquity, and to venerate long established usages. We think our ancestors were the wisest and best of men. Many of the ancient sages attained reputation, merely because they advanced a little beyond the ordinary stature of their times. Plato, Aristotle, and Socrates, *cum multis aliis*, were men of only ordinary stature, but they lived amongst *pigmies*. Yet these men, famous as they were, and still are, were but *pigmies* compared with myriads in after times. But, Sir,

Pigmies though perched on Alps, are *pigmies* still;
And pyramids, are pyramids, though placed in vales.

I do not say that amongst the ancients there were not great men, but I do say, that light and science are progressing, and that many of those reputed great, are not worthy of the admiration bestowed upon them. They owe their fame to the age in which they lived. The greatest of these sages, statesmen, and orators, have been far surpassed by the moderns. It was well for the reputation of Demosthenes and Cicero, that they lived so long before the days of Sheridan and Burke.

The science of politics and Government is as well understood in this age as in any former age of the world. I would say better understood. Yes, Sir, and I would say more, better understood in these United States, than in any other country upon the face of the earth. But though our present Constitution was the best production of nearly six thousand years, experience and the progress of political light have discovered some defects in it.

I did expect, and did promise myself, that Virginia would at this time present to the world a model, the best model of Government the world ever saw. When I heard of the talent which was to be assembled here, and which I now see convened around me, I thought myself warranted in expecting that such would be the result of our deliberations. All eyes have been turned to Virginia: all these United States are looking with intense interest to Virginia. She owes it to herself, to the whole United States, to the world, not to disappoint the general expectation. Will the Ancient Dominion respect herself, and realize the hopes of her friends? I am, Sir, beginning to despair, and to fear that we are again to prove that *retrogression* rather than *progression* is the common characteristic of man.

Some call every attempt at reformation, and every new suggestion, a *new theory*. With them, the reformist is a theorist, and his amendments are mere theories. I am no friend to mere theories, but all reformations and all improvements are first theories. I cannot call every effort to ameliorate the political condition of man a mere theory, a visionary theory. And yet, Sir, I am no friend to new theories; but remembering

as I do, that we owe all our improvements which have raised the present above all past ages, to mere theories, as some gentlemen please to call them, I cannot disparage theories in the gross. Yes, Sir, printing itself, this art which has revolutionized, and is revolutionizing the world, as well as all the American systems of Government, were once but *mere theories*.

I have no new theory now to offer; I only wish to see the principles already defined, understood, and canonized, carried out to their proper extent. I think we are prepared for nothing more; we can reasonably ask for no more at present. But I am very far from thinking that the social compact has yet been perfected, or that society is yet prepared for the best possible political institutions. That Government is best for any people that is best adapted to their views, wants, wishes, and even prejudices: Not that which is best administered, but that which best suits itself to the great mass of society. This seems not to have been overlooked by the framers of the Bill of Rights, and the founders of this Government. They declared the principles, the just and righteous principles of the social compact; and progressed so far in the application as they supposed the then existing state of society required and permitted. But foreseeing that changes would take place, and that the human mind was progressing and would progress, they revised, and most prudently advised, a frequent recurrence to fundamental principles: Not to change those principles as one gentleman, (Mr. Giles,) asked, but to purge and reform our institutions by bringing them up near to the unchangeable principles; by a continual approximation to the cardinal principles which they propounded. Amongst all the great political truths which these sages declared, not one is more just or evident than this; "That no free Government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles."

Mr. Chairman, I have based the resolutions which I have had the honor to submit, upon the doctrine contained in the 6th article of the Bill of Rights. And, Sir, permit me to say, that I am more attached to the Bill of Rights, than I was before the late discussion commenced. I have seen that this instrument has been our palladium, and the only bulwark against the demolition of our republican citadel, and the destruction of the Republican character of our Government. Nothing has now saved us from the establishment, the canonization of the most prominent features of an aristocracy, but this same Bill of Rights. Have not the efforts of all the gentlemen anti-reformists been directed in some way or other against the letter of this instrument? Some have oppugned it one way, and some another. But all who have plead the mixed basis and the freehold qualification, have found it in their way, and have made it in whole, or in part, a dead letter. Whether they intended it or not, such has been the effect of all their criticisms upon it. And, Sir, give me leave to add, if those gentlemen had succeeded in their efforts, and at this time carried the *taxation basis*, upon their constructions of the Bill of Rights, would it not be possible some fifty years hence upon a more liberal construction, and with the precedent of these proceedings before another Convention, to originate a legalized aristocracy in the fullest sense of the term? Yes, Sir, if in the short period of *fifty-four* years, so great a departure from the principles developed and prescribed by the framers of the existing Constitution, should have been completed as the basing of this Government on wealth, on wealth, Sir, I repeat, disguise it as gentlemen may, fifty-four years more, and another Convention following such examples, and such interpretations, and we would have an oligarchy *in propria forma*, a by-law established nobility. Seeing the warfare which has been waged against this now more than ever dear to me instrument, and seeing the barrier which it has thrown in the way of all encroachments upon our free institutions, I shall vote for its being perpetually a part of the fundamental law of our country.

I was glad on yesterday morning, to hear the gentleman from Henrico, (Mr. Nicholas,) begin his speech with the doctrine of this section of that instrument; not, Sir, with the application which he made of that doctrine. According to his interpretation, no man has any attachment to the community or country, but a freeholder. You will observe, Sir, that I have, in the resolutions before you, only developed the meaning of the 6th section of the Bill of Rights; the plain English interpretation of the words. If a single idea, not founded on the fairest and most just interpretation of these words, is found in any one of those resolutions, I hope it may not be retained. Some gentlemen allege, that in the year 1776, the words *common interest with, and attachment to*, the community, meant neither less nor more than a freeholder. According to what dictionary or mode of interpretation, this meaning is made out, I have not as yet learned. Words may be used in an appropriated sense, I own; but some proof of this appropriated sense must be produced; as yet, I have not heard any authority other than assertion. Please observe that the words "*common interest*" do not mean *equal* interest. That they do not, the single fact of the *inequality* of the freeholds from twenty-five to one thousand acres in extent, and from twenty-five to one hundred

thousand dollars in value, unquestionably indicates. *Common* interest admits of the greatest variety in the extent and value of that interest. One gentleman had spoken of the interest which one man might have in a ship which had a valuable cargo aboard, and another who had only his person. They both had a common interest, it was true; but he might have given to the figure a greater extent, and supposed that many individuals might have had different stakes embarked on the same bottom. Besides their own persons, they might have a great diversity of interests, and though disproportioned in value, equally interesting them all in the safety of the ship. No two interests are precisely equal, yet all have a *common interest*. But it is said that this common interest must also be a *permanent* interest. This further defines the nature of this common interest. This restrictive term denotes that it is not to be a transient interest. But still this word *permanent* is only comparative and necessarily limited. The various interests which we found embarked in the same ship, are as permanent as the voyage from port to port. It may be a long voyage or a short voyage. So it may be, and so often is the journey of human life. Our interests in the State are as transient and as uncertain as our lives. We all have a common interest in the State, but how permanent or how transient that interest may be, cannot be defined. Besides, it may in any given instance, be more transient than our lives. He who has a freehold of any given extent, may either sell or spend it in a very short time, and if we make his tenure of that estate the test of his permanent interest in the State, we have fixed upon as great an uncertainty as can be well conceived. It is a very precarious permanency, as uncertain as the tenure of life, and not necessarily of longer duration than any other man's interest in society. The landlord and the tenant may have, as far as law or reason can determine, the same permanency of interest.

But there is another consideration mentioned in this article, to which I presume this permanent, common interest is subordinate, and to which it stands rather in the relation of means to end. This is comprehended in the word *attachment*. This is the desideratum. Attachment to the community is the best guarantee, and indeed the only guarantee. A person may possess the property of a freehold without the attachment, and the attachment without the property. No man can intentionally, by his vote, injure that community to which he is attached. And as property in the earth was supposed, and justly supposed, in most instances, to attach persons to the community, it has been selected as one proof, (and it is but one,) and not the strongest proof of such attachment. Nativity is a stronger, a much stronger, and a more invariable evidence of attachment to a community, than wealth or any other consideration. It is upon this incontrovertible fact, which I presume no person will impugn, that I base my second resolution. My first embraces all the present voters in Virginia. And, taking for granted that the Bill of Rights makes *attachment* to the community, the great consideration which qualifies an elector, I contend that it is the letter and spirit of this article to extend the Right of Suffrage to every free white male of the age of twenty-two years, born within this Commonwealth. The reason why I fix upon the age of *twenty-two* years rather than *twenty-one*, is to meet a fastidious objection, which I had anticipated as possible to be presented upon a very literal interpretation of the text. It might be said, and with some plausibility too, that a young man of the age of twenty-one, has, by no act of his life, afforded any evidence of permanent, common interest with, or attachment to, the community, who has just arrived at the age of twenty-one, inasmuch as he has, till that moment, been under the guardian and compulsory authority of his parent or guardian. His living one year after he has become a free agent, destroys that objection, and, in addition to his nativity, affords all necessary evidence of his attachment to the community. This is the *rationale* of the second resolution.

To fortify or illustrate this position, or, in other words, to prove that nativity is the best guarantee for attachment to any community, I deem, at this time, a work of supererogation. I feel no disposition to repeat arguments already offered on this and other topics connected with it. After the very able argument of the gentleman from Loudoun, (Mr. Henderson,) which, like a tornado, left nothing behind it, I think such an effort on my part altogether superfluous. True, Sir, one gentleman from Southampton, (Mr. Trezvant,) called it "*empty declamation*," but I would like to see him or any other gentleman attempt by a fair analysis to *prove* it declamatory, and not argumentative. I do think that no gentleman can refute the arguments of the gentleman from Loudoun. They carried irresistible conviction to my mind; and I think it unnecessary to repeat or defend them, until they have at least been formally assailed. The memorials laid upon that table, sufficiently argue this question.

My third resolution, Mr. Chairman, has respect to another class of inhabitants in this Commonwealth. And the only difficulty, as indeed, the only question of much consideration, which occurs in settling who shall be citizens of this Commonwealth, is, what shall be required of those not natives of Virginia, nor embraced in the present laws conferring the Right of Suffrage? You see, I prefer residence and a *moral qualification*, to a pecuniary or property qualification. The payment of any given tax

imposed on the purchasing of a piece of land, does not present to my understanding, according to my views of human nature, such evidence of common interest with, and attachment to, the community, as that submitted, and it certainly does not present such temptations to corruption, or to that buying of votes of which some gentlemen speak, as the fixing of a certain amount of tax as the qualifying consideration. Where there is no price proposed, there is no temptation offered, and therefore, corruption is rendered as impossible as the freehold can be supposed to make it. If we desire to see men act a dignified part, we must treat them according to the dignity of human nature. If you put the tax at one dollar, you make the price of a thousand votes only a thousand dollars. But, according to the principle of this resolution, every improper incentive is removed out of the way. A person who becomes an inhabitant of this State, and who desires to become a citizen, a permanent resident, not upon the excitement of an election immediately approaching, calmly and dispassionately goes to the court in the county in which he resides, and declares his intention of becoming a permanent resident. Twelve months afterwards, he returns to the same court, and promises to submit to, and support the Government of, this Commonwealth. Now, I ask, is not this the strongest evidence which the native of any other State can give of his attachment to, and of his feeling a common interest with, the community? I think it must appear so to all, except them who think that virtue, intelligence and patriotism, spring up out of the soil, and grow like mushrooms upon its surface, after a person has paid a stipulated price for it. But in these United States, the principle embraced in this resolution is regarded as a higher proof of attachment to the community, than the purchase of any amount of real estate. When a foreigner from any other country expatriates himself, and desires to become a citizen of these United States, the purchasing of no amount of real or personal estate, will prove his attachment to the country. He must, if he will become a citizen, go into court and make a solemn renunciation of every foreign Prince and Potentate, of all allegiance to any foreign Government, and promise to submit to and support the Constitution of these United States. This, in the estimation of the good and wise framers of our State and Federal Governments, is the highest proof of attachment to, and of feeling a common interest with, the community, which can be afforded. Now, although I would not require all the same formalities, I contend that the principle of the third resolution warrants us to entertain more confidence in the person who thus becomes a citizen, than the mere possession of any freehold. For, unless gentlemen will argue that moral qualities are in the soil, and spring up in a man's mind from the ownership of it, they cannot, I presume, prefer it to the plan proposed upon any principle implied in, or derivable from, the Bill of Rights. The second and third resolutions, I conclude from these and other considerations, are equitably based upon the sixth section of the Bill of Rights.

One word upon the fourth resolution, and I dismiss this part of the subject. I cannot consent to disfranchise all paupers. Ingratitude is one of the greatest crimes against Heaven and man. If then, Sir, any pauper shall have rendered any important service to his country; if he shall have fought her battles, and his virtues have made him a pauper, it would be as cruel, as ungrateful, as it would be *impolitic*, to disfranchise him. It would be a bad precedent; it would evince a destitution of the noblest principle which can dignify a man, or exalt a nation.

This, Mr. Chairman, is the whole *rationale* of the scheme proposed. I was not so studious of the terms, as of a clear development of the principle. But, I will be told by Dr. Expedient, that however reasonable, or however just, and however accordant with the spirit of the age, and the meaning of our fundamental principles of the social compact, it is not expedient. I never liked this doctrine of expediency. Its grand-father was a *Jesuit*. It was the popular doctrine in the Catholic Dominions of the Roman Hierarchy. It kindled all the fires, heated the furnace, and prepared the red-hot pincers of the Holy Inquisition. His *Majesty* the King of Great Britain, and his Court, on the doctrine of expediency, established Episcopacy in England, Presbyterianism in Scotland, Popery in Canada, and Paganism in the East Indies. Yes, Sir, it was expedient to lay a capitation tax upon the worshippers of Juggernaut, just as the Turks levied a capitation tax upon the pilgrims who went to visit the Holy Sepulchre. This, Sir, I believe, furnished the first model, and is the true origin of the Virginia "*poll-tax*." This doctrine of expediency is an off-set against all reason, argument, and principle too. It was not expedient for England to let France govern itself. It was not expedient to permit any other sort of Government to be erected so near the British Throne, than that which accorded with the genius of the English Monarchy. Thus, the flame of war spreads over Europe, and England, from her regard to the doctrine of expediency, made Buonaparte the wonder of the world. Had she permitted France to manage her own affairs, the ambition of Napoleon would not, in all human probability, have transcended the ancient limits of France. But, she made him acquainted with his own military prowess, and forced him to extend his sceptre in the year 1813, over 64,000,000 of human beings. But, Sir, it would be

endless to detail the enormities which have been perpetrated, the blood that has been shed, the havoc of human life which has been made, in obedience to the suggestions of this popular doctrine of expediency. It has invaded and destroyed every right of man. Pardon me, Sir, for mentioning *the rights of man*. For it would seem, that man has no rights but what the different Governments in the world please to bestow upon him. His rights in Russia, Turkey, France and England, are just what the Governments please to bestow upon him. Believe this who may, I cannot. He has, in my judgment, certain inherent and inalienable rights, of which he cannot be divested with impunity. Amongst those is the right of a voice in the Government, to which he is to submit.

But I am told that Universal Suffrage, (I am no advocate for Universal Suffrage,) or more correctly *General Suffrage*, was the invention of the age of the Lord Protector Cromwell—that it sprung up for the first time, during the Commonwealth of England. It is called *novel* doctrine. Were it so, that would not prove it false. Steamboats are a novel invention, and many other useful arts are comparative novelties. The new race of men which modern science has created and made, is a new invention. I mean the wooden, brazen and iron men, which neither eat, drink, sleep, nor get tired; which are adults without being infants, full grown men as soon as born. These new men, these novelties, are likely to be a very useful race; for when inspired by steam, they are as rational as our black population. England has two hundred millions of them, and these United States have more than ten millions of them. They are all revolutionists and will as certainly revolutionize the world as ever did the art of printing, or any conquering invader. They are all novel too. No prophetic eye, nor prophetic pen, can describe their progress, or foretell their destiny. All novelties are not fictions. But, Sir, notwithstanding the general historic accuracy of gentlemen on the other side, they have mistaken the date of the origin of General Suffrage. It is more ancient than the British, the Roman, the Grecian, or the Persian Governments. It is now three thousand three hundred and twenty-nine years old. I have heard gentlemen quote the Mosaic history on this floor. It will be no sin, I hope, for me to quote the same authority. Now, Sir, if gentlemen will look into the Exodus of Israel, they will find that the Virginia Constitution was not the first *written* Constitution, nor the General Suffrage the invention of Oliver Cromwell. Cromwell, Sir, was a prodigious genius, but this he did not invent. When Israel became a Commonwealth, and, Sir, they were a Commonwealth, and were so denominated two thousand years ago by a very high authority, I say when Israel became a *Commonwealth*, they received a Constitution from him who led them through the Red Sea. Israel in the wilderness amounted to six hundred thousand fighting men. The God of Israel first proposed a social compact. It was called in Hebrew *Berith*, in Greek *Diatheke*, in Latin *Constitutio*, in Scotch *Covenant*, after the manner of the “Solemn League and Covenant.” It is precisely equivalent to our English word *Constitution*. This was *written*, and it is the oldest written document upon earth. After it was written, it was submitted to every man upon the *muster roll* of Israel. Their vote was required and they voted for its adoption as their national compact. So old, Sir, and so venerable is the origin of General Suffrage.

It is no novel doctrine in this country. My colleague and friend from Monongalia, (Mr. Morgan,) this morning, presented us with the history of General Suffrage in these United States. He has anticipated my remarks on this topic. It is enough for me to observe, that no less than half the States in this Union, have totally discarded the property qualification of electors. And half of these, Sir, are slave States. And it has appeared too, Sir, that so far from impairing the safety of property or the progress of improvement, or the peace and happiness of these States, it has contributed to the prosperity of all of them.

The gentleman from Southampton, (Mr. Trezvant,) informed us, that all history shewed, that in all Governments where General Suffrage prevailed, a military despotism ensued, and ultimately the liberties of the people were destroyed. I know not, Sir, whence this gentleman has derived his historic information, but one thing I will venture to affirm, that he can shew no one instance of the practice of General Suffrage issuing in a despotism, civil or military, where the Government was *representative*. Such an instance will be necessary, if not to sustain his position, at least to give it any application to the question now before the Committee.

But, Sir, what was the overthrow of every Government that has hitherto fallen into ruins? And many Governments have been subverted; many great empires have gone to perdition. When the real, the true cause is ascertained, the cause which all history develops, it will appear that a disregard of the rights of man was the sole cause of their subversion. Yes, Sir, one party, and always the governing party of the community, invaded the rights of the other. An infraction of these inherent rights, these natural rights of man, has proved the overthrow, the ruin of every Government now extinct in the world. Search the annals of all time, and not an instance can be found contrary to this fact. No Government which has paid a due regard to the rights of man

has ever been subverted. Where are all the ancient empires of the world? The Egyptian, Assyrian, Persian, Grecian, Roman? All, all, Sir, dilapidated, all gone to ruin. And what was the cause? Either they were not founded on a just regard of social rights, or ceased justly to regard man according to his nature. Their perdition is, and ought to be, a beacon, a caveat to us. I said upon another occasion, that every departure from the principles of the true philosophy of man was dangerous. The illustration which I used has been perverted by the gentleman from Spottsylvania. I did not say that the laws and rules of mathematical science were to be applied to civil Government, but that there was as much certainty, as much truth in morals, in politics too, as in mathematics. It is not always so perceptible, but it is nevertheless just as certain, and as unchangeable. And, Sir, however slow, however gradual, the departure from correct and fundamental principles, if persisted in, if continued, it must result in very great and fatal enormities.

I was sorry to hear, the other day, the eloquent gentleman from Charlotte, (Mr. Randolph,) protest against his majesty *King Numbers*, and declared his readiness to revolt from his government, and to migrate from his dominions. *King Numbers*, Mr. Chairman, is the legitimate sovereign of all this country. General Jackson, the President of these United States, is only the representative, the *lawful representative* of *King Numbers*. And, whither, Sir, can that gentleman fly from the government of this King? In the North, in the South, in the East and in the West, he can find no other monarch. Except he cross the ocean, he can put himself under no other King. And whenever he may please to expatriate himself, he will find beyond the dominions of *King Numbers*, there is no other monarch, save *King Cypher*, *King Blood*, *King Sword*, or *King Purse*. And, Sir, permit me to add, there is none of those so august as our King. I love *King Numbers*; I wish to live, and I hope to die, under the government of this majestic personage. He is, Sir, a wise, benevolent, patriotic and powerful prince—the most dignified personage under the canopy of Heaven.

I heard that same gentleman, Mr. Chairman, with pleasure too, refer to a saying of the immortal Bacon. Twice he alluded to it; twice he spoke of the great *innovator*, time. I did wish to hear him quote the whole sentence, and apply it. Lord Bacon said, (I think I give it in his own words)—“*Maximus innovator tempus; Quidni igitur tempus imitemur?*” Why then, says he, can we not imitate time, the greatest of all innovators? The Romans long ago learned this lesson. Their moralists taught it to their children—“*Tempora mutantur, et nos mutamur in illis.*” Why, then, Sir, cannot we learn to imitate time?

I am glad, Sir, to find myself associated with many gentlemen on this floor, who are inspired with the spirit of this age, who have not only grown up *under* this age, but grown up *with* it. They are willing to learn what time, the great teacher, and the greatest revolutionist, teacheth. And, Sir, she is an eloquent preceptor. These gentlemen, Sir, who feel the current of time, who are in heart, in unison, with this age, have no idea of making Chinese shoes for American feet; or of constructing a new bedstead after the manner of Procrustes, for men of American stature.

But, Sir, there is one most august tribunal to which we must all bow. Time will make us all do homage before it. This, I need not inform you, is the tribunal of *public opinion*. This is the supreme tribunal in all this extensive country. No sentiment is canonical in this country, which this tribunal reprobates. All our acts must be judged by it, and I rejoice to live in a country in which this is the supreme law—and in which no political maxim can prevail which does not quadrate at all angles with the *dicta* of this tribunal.

I am assured, Mr. Chairman, that it is in the power of this body to make this land one day, the happiest land on the earth—to infuse into our institutions, such principles as would elevate, enlighten, and happyify this community, greatly beyond any thing yet experienced on this continent. I mean to say, Sir, that from the lights which concentrate their influences upon us—from the wisdom and talent assembled here, we have every facility for carrying to a much greater extent improvements into the social compact. Were this assembly far inferior to what it is, such a result might reasonably be expected. Standing as we do, upon the shoulders of all former Conventions, and being furnished with all the experiments which have been made in ancient and modern times, much is reasonably expected from us. But I fear these monosyllables *mine* and *thine*, are about to frustrate all attempts at a thorough amelioration of our condition.

I did hope that we would feel a little more in accordance with the progress of improvement and the spirit of the age, than to put forth all our energies in a contest about mere local interests, which a few years will change in defiance of all our efforts. Yes, Sir; a few years will settle all these questions about *mine* and *thine*. But should the improvement of the condition of society have been taken into consideration—should the adaptation of our political institutions to the actual condition and circumstances of the great mass of the community have engrossed our attention

or entered into our hearts, I doubt not but we could have endeared our memory to the latest posterity. To mention only one instance; we have been told that it is quite practical now to give birth to a system of education, which in *twenty* years from this day would render it impossible for a child to be born in this Commonwealth and to live to manhood, without receiving a good education, and that too, Sir, without the laying any tax after that day for the support of such a system. I have understood, Sir, and from good authority too, that in some parts of Massachusetts, particularly in the environs of Boston, any child, without the contribution of a single cent, may receive not only a good English, but a classical education. Such is the extent to which the common school system has been carried in that enlightened community.

Yes, Mr. Chairman, we might now bless Virginia with a social compact which would, in the gradual progress of time, develop and improve the intellectual and moral powers of every member of the community, and contribute to the political good of the whole Commonwealth. Is not such an object worthy of such a Convention? And would not the origination of such a splendid scheme carry down, for a thousand generations, the grateful admiration of our services? But, if we exhaust our energies on these little localities, time, the great innovator, will break our arrangements to pieces: For it is decreed, that every system of Government not based upon the true philosophy of man—not adapted to public opinion, to the genius of the age, shall fall into ruins.

But, Sir, one gentleman, (Mr. Randolph,) referred us to the *great men*, which the present system in Virginia had produced. We doubt it not, Sir. I have lived in a country in which there were many great men: very learned and very powerful men. But how were they created, Sir? For one noble Lord, there were ten thousand ignoble paupers, and for one great scholar, there were ten thousand ignoramuses. That is the secret, Sir. I never wish to see this mode of making great men introduced into this Commonwealth. I trust, Sir, we will rather strive to make many middling men, than a few great or *noble* men. When we adopt the English way of making great men, we will soon adopt the English way of speaking to them. I have heard of but one "*noble friend*" in this Committee, as yet; but, Sir, it is a contagious spirit. There are many sorts of great men. It is not necessary to create them in advance of the demands of society. Peculiar crises call them into being. This sort of great men, has always been the creature of circumstances. One of them was once found on Mount Horeb, another on the way to Damascus—one at Mount Vernon, and another was found in the county of Hanover, with a fishing rod in his hand. The Island of Corsica produced one, when he was wanted. There is no occasion to devise any plan for creating this sort of great men. But, Sir, under a proper system of Government, we should be able to multiply other sorts of great men a hundred fold, and we should not fail to derive benefits of every sort, intellectual, moral, and political, incomparably surpassing any sacrifice we should be obliged to make in commencing such a system.

One word more, Sir, and I will not further trespass upon the patience of the Committee. The scheme which is contemplated in these resolutions, is not only, I think, adapted to the general good of the whole State, but especially to the Eastern part of it. I was much pleased with the suggestion of the gentleman from Albemarle, (Mr. Gordon,) it was founded on a correct knowledge of man. When we disfranchise one class of men, or deprive them of their political and natural rights, to secure any property or privilege we possess, we endanger that very property and those very privileges, more by such disfranchisements, than we protect them. We give an invidious character to those interests and privileges, and we create antipathies against ourselves. It is in the nature of man to hate, and to attempt to impair and destroy, that which is held at his expense, and which degrades him in his own estimation. For the safety, then, and preservation of those very interests, I would conceive this extension of the Right of Suffrage indispensable. If the extension sought for in these resolutions, can be obtained, I am not tenacious of the words or of the form in which it is sought. I chose thus to develop the principle. I aimed at no more, than to shew, that it is in accordance with the Bill of Rights. I did not expect to have addressed the Committee at this time; but on the failure of the scheme submitted by the gentleman from Monongalia, (Mr. Wilson,) I thought it expedient to make another experiment. Had it been my object to do more than to expose the principle, I should have, in a more syllogistic form, fortified and defended the grounds on which it is based. But, even in this, I have been, in a great measure, anticipated by the gentlemen who have preceded me.

The question being then taken, it passed in the negative by a very large majority, eleven only rising in the affirmative.

Mr. Scott then gave notice that in case the resolution offered by Mr. Pleasants yesterday shall be rejected, he will move the following:

Resolved, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively, and in the Senate to taxa-

tion exclusively: That the House of Delegates shall consist of one hundred members; and the Senate of forty-eight: That the Senate shall have the same Legislative powers in all respects as the House of Delegates—and all appointments to office, which by the Constitution shall be referred to the two Houses of the Legislature, shall be made by a concurrent vote.

The Committee then rose and the House adjourned.

FRIDAY, NOVEMBER 20, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Taylor, of the Baptist Church.

Mr. Thompson of Amherst, offered the following resolution:

Resolved, That during the remainder of the session of this Convention, the 22d rule thereof shall be observed in the Committee of the Whole, and that "it shall be the duty of the Clerk hereafter to keep a Journal of the proceedings of said Committee, and to insert in such Journal, if they can be ascertained, all the proceedings heretofore had therein."

Mr. Wilson called for the reading of the 22d rule.

The 22d rule is as follows:

"Any member on his motion made for that purpose, on being seconded, provided seven of the members present be in favor of the motion, shall have a right to have the Ayes and Noes taken upon the determination of any question, provided he shall give notice of his intention to call the Ayes and Noes, before the question be put, and in such case the House shall not divide, or be counted on the question, but the names of the members shall be called over by the Secretary, and the Ayes and Noes shall be respectively entered on the Journal, and the question shall be decided as a majority of votes shall thereupon appear: provided that after the Ayes and Noes shall be separately taken, and before they are counted, or entered on the Journal, the Secretary shall read over the names of those who voted in the affirmative, and of those who voted in the negative; and any member shall have liberty at such reading to correct any mistake which may have been committed in listing his name, either in the affirmative or negative."

In supporting the resolution, Mr. T. observed, that it might have been foreseen, and must now be obvious to all, that the whole of the important business of this Convention would be done in a Committee of the Whole; the Convention, as such, having little left for it to do but to give its sanction to the acts of the Committee of the Whole, and embody them in a regular form. If then the privilege of recording his vote was important to a Delegate any where, it was eminently so here; for, the Committee was nothing else but the Convention in another form. The adoption of the resolution, would be productive of an economy of time. All the members came charged with some grievance his constituents desired to have redressed. If they were allowed the opportunity of satisfying their constituents, that they had made an attempt to discharge the duty entrusted to them in the Committee of the Whole, there would be no need of repeating their motions to that effect, in the Convention: the District having seen the course pursued by their Delegate, would be satisfied, and much time would be saved. Such a measure was not unsupported by precedents. A similar regulation had been adopted in the Federal Convention, when the Constitution of the United States was framed: the Yeas and Nays were recorded, and a regular Journal kept in the Committee of the Whole. Another precedent was to be found in the records of the New York Convention, in 1820. He hoped that gentlemen, who professed to hope every thing from a re-action in the public mind, would offer no opposition to a proposal of this description.

Mr. Leigh was opposed to the resolution. He had supposed that if there was any body of law in the world approved by the experience of mankind, and altogether unexceptionable, it was the body of Parliamentary Law. The Committee of the Whole was one of the most valuable institutions ever devised for facilitating the business of a deliberative body. It gave opportunity for full, fair and free discussion, untrammelled by the forms necessarily attendant upon the definitive action of a Legislative Assembly. Yet here, said Mr. Leigh, we have a proposition to abolish all distinction between the Committee of the Whole, and the House in its Conventional capacity. Its effect will be to make the Committee of the Whole, the Convention—the only remaining difference will be that the presiding officer of the one is called a Chairman, and the other a President. I differ entirely from the gentleman's view of the matter. I hold that there is a great and essential difference between the two, and in that difference it is that the excellence and advantage of the Committee of the Whole entirely consists. But there is precedent for it. The gentleman has quoted two, but the first

of them is no precedent at all; for the Convention of '87 voted not by members, but by States, and it was necessary to declare, which States were for, and which were against any proposition, in order to determine the question. It is true that such a rule was adopted by the Convention of New York, which sat at Albany in 1820. Why, I do not know; but this I do know, that there was in that Convention such bidding in the auction of popularity, as never was known on earth before. It seems to have been adopted there in order to record the bids, but here there is no bidding that I know of, and if there shall be any, there can be no need of recording it; for the opinions we deliver here, are as well known by the public, as if they were recorded on our Journal.

Mr. Thompson thought the gentleman from Chesterfield, had not been very happy in his appeal to experience; he had said that no such example could be furnished. There have been many deliberative bodies, they are of ancient origin; but there have been only a few Conventions, and they belong to modern times. We have adduced the experience of two of these Conventions; whether the same expedient be resorted to in the others which have been holden, I cannot tell: but it is very probable. But, how has the gentleman succeeded in shewing, that the case of the Federal Convention was so entirely dissimilar, as to furnish no precedent for this body? The gentleman says, it is because the votes there taken, were given, not by individuals, but by States. But, surely there was no more need to record the votes on that account, than if they had been given by individuals. I can see no distinction whatever, in principle; we may just as well record our votes, as they recorded theirs. The experience we have already had in this Convention, proves the utility of the plan; for we have already been compelled to resort to it. We have been greatly crowded by company, who have almost mingled themselves with the members. This may be the case again, and we may be again compelled to take the same course. It occupies little more time to record the names than it does to call them, and surely we have not shewn ourselves penurious of time. As to the auction of popularity, of which the gentleman spoke, I have nothing to say, because he has disclaimed any personal allusion. Whether he is right in his opinion of the New York Convention in this respect, I cannot tell. I have read the Journal of their Debates, and I did not perceive the evidence of any thing of the kind. I thought their proceedings were such as did honour to the State, and I consider them well worthy of our imitation.

Mr. Stanard said, that judging from appearances as to what the gentleman's object was, he thought he had taken a very round-about way to get at it: his more direct and obvious course would have been to move at once to abrogate the Committee of the Whole. His resolution did that in effect; for, why have any Committee of the Whole, if its proceedings are to be attended with the same formality, and to have the same effect as those of the original body? The gentleman had better march up at once, fairly, to his object. He has quoted precedents, said Mr. S., and what are they? He ventures to *suppose* that the precedents in the Conventions of all the States are in his favour: it is a bold supposition. Yet it is a little extraordinary, that that gentleman has contented himself with supposing, and has forbore to examine. This will appear strange to any one who knows with what accuracy that gentleman furnishes information, and what pains he takes to be exact in all his facts. If, indeed, the gentleman has examined, he cannot be ignorant that there have been thirty Conventions in this country, which have had the same service to perform as this; and yet out of that whole number, there have been but two which have so much as thought of recording their proceedings in Committee of the Whole. One law seems to have governed bodies of that kind, ever since they existed, and I am not in favour of any innovation. It is a measure likely to end in no good, and there is not the least shadow of necessity for it.

The question being now about to be put,

Mr. Gordon demanded that it should be taken by Yeas and Nays. It was accordingly so taken, when the Yeas and Nays stood as follows:

Ayes—Messrs. Goode, Anderson, Coffman, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Mercer, Henderson, Cooke, Opie, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Martin, Gordon, Thompson and Joyner—39.

Noes—Messrs. Monroe, (*Pres't.*) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Marshall, Tyler, Nicholas, Clopton, Harrison, Baldwin, Johnson, Miller, Mason, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Barbour of Orange, Stanard, Holliday, Powell, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Grigsby, Townes, Pleasants, Massie, Taliaferro, Bates, Neale, Rose, Bayly, Upshur and Perrin—51.

So the House refused to rescind the rule as proposed, and to record their proceedings in Committee of the Whole.

The Convention then proceeded to the Order of the Day, and went into Committee of the Whole, Mr. Powell in the Chair; and the question still being on the third resolution reported by the Legislative Committee, and amended by the Convention, in the following words:

“Resolved, That the Right of Suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution; and shall be extended, 1st, to every free white male citizen of the Commonwealth, resident therein, above the age of twenty-one years, who owns, and has possessed for six months, or who has acquired by marriage, descent or devise, a freehold estate, assessed to the value of not less than _____ dollars, for the payment of taxes, if such assessment shall be required by law; 2d, or who shall own a vested estate in fee, in remainder, or reversion, in land, the assessed value of which shall be _____ dollars; 3d, or who shall own, and have possessed a leasehold estate, with the evidence of title recorded, of a term originally not less than five years, and one of which shall be unexpired, of the annual value or rent of _____ dollars; 4th, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: Provided, nevertheless, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor or marine, in the service of the United States, nor by any person convicted of any infamous offence; nor by citizens born without the Commonwealth, unless they shall have resided therein for five years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law), and shall possess, moreover, some one or more of the qualifications above enumerated.”

Mr. Leigh of Chesterfield moved to amend the resolution by striking out all after the words *“Resolved, that,”* and inserting the following as a substitute:

“Every male citizen of the Commonwealth, resident therein (other than free negroes and mulattoes,) aged 21 years and upwards, qualified to exercise the Right of Suffrage by the existing Constitution and laws,—

And every such citizen being possessed, or whose tenant for years, at will and at sufferance, is possessed, of land of the assessed value of _____ dollars, and having an estate of freehold therein,—

And every such citizen being possessed, as tenant in common, joint-tenant or coparcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of _____ dollars,—

And every such citizen, being entitled to a reversion, or vested remainder in fee, expectant on any estate for life, or lives in land of the assessed value of _____ dollars,—

And every such citizen, being possessed of a leasehold estate in land, claiming under a lease, renewable at the option of the lessee, absolutely, or upon payment of a fine, or performance of other condition, the yearly value of such land being _____ dollars,—

Each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage settlement, having been so possessed or entitled for six months,—

And no other persons,

Shall be qualified to vote for members of the General Assembly, in the county, city, or borough, respectively, wherein the land lieth:—

Provided, That no person shall be entitled to vote more than once, or at more places than one, in any election;—

And, provided, That non-commissioned officers, soldiers, sailors, and marines, in the land or naval service of the United States, shall not be qualified to vote;—

And, provided, That the Legislature may, by law, deprive any persons of the Right of Suffrage, for crimes, whereof they shall or may be convicted.”

The amendment having been read, and the question upon it propounded from the Chair, Mr. LEIGH rose, and spoke to the following effect—

Mr. Chairman,—It may be, perhaps, that in submitting this proposition, and in the earnest endeavour I am going to make to explain the principle it is founded on, to maintain it as the wisest and surest foundation of a Representative Republic, and particularly suited to the circumstances of this Commonwealth, and thus to recommend it to the favourable consideration of the Committee, I am taking a task upon myself, utterly nugatory, as well as laborious and ungracious. For, it seems, plainly enough, to be the general opinion, that any effort to preserve a landed qualification of the Right of Suffrage must fail. Yet, if it shall fail, the principal reason of its failure, I am persuaded, will be found in the prevalence of the opinion that it certainly will fail, rather than that it ought to fail. It happens in most political questions and controversies in our day and nation, that the first exertion of men's minds is to ascertain which way

the majority is, and if that point can be ascertained, it generally in fact (and in the opinion of many, rightly too) sways and determines the majority. For my own part, however, the landed qualification of the Right of Suffrage stands approved in my judgment, by principle and experience, and the more I have reflected and the more I have observed upon the subject, the more strongly approved; and a departure from it is condemned, in my view of things, by the experience of the other States of this Union. In almost every instance, in which our sister States have broken up old foundations, and departed from the landed qualification of Suffrage, they have proceeded eventually and instantaneously, to Universal Suffrage—I say, instantaneously—for speaking in regard to the life of a nation, the transition is instantaneous. States never go upward, in affairs of this kind—their course is always downward—the downward course is easy, the downward tendency constant; and down, down they go, to those extremes of democracy, which have always ended, and will always end, in licence and anarchy, and thence, by inevitable consequence, in despotism. The first wish of my heart is for a practical, regular, stable, Republican Government; to which, in my apprehension, violent extremes of all kinds are equally dangerous and hostile. And perceiving (as I do but too clearly for my own peace of mind) that if we too depart from the landed qualification of Suffrage, we shall not stop short of Universal Suffrage, in the end—believing, indeed, that it is Universal Suffrage, in effect, to which the views of many gentlemen obviously tend—and feeling the most anxious forebodings of danger to all regular Government, from the admission of the principle into our institutions—I am, therefore, desirous to extend the Right of Suffrage only to those who are within the equity of the original principle of the freehold qualification, on which the founders of our Government placed it.

When my friend from Augusta (Mr. Johnson) gave the Committee his interpretation of the first resolution of the Legislative Committee, and endeavoured to shew us, that the proposal to apportion the representation according to the white population only, was tantamount to, and really meant, an apportionment of representation according to the qualified voters; and then endeavoured to reconcile us to that scheme of apportioning the representation, thus expounded and understood, before it was yet determined who should be the qualified voters, I saw at once, and wondered he did not see, that that argument went beyond and beside the purpose for which he used it—that it would chiefly affect the question concerning the qualification of the Right of Suffrage—that, with the exception of himself, and a very few others, all those who are for apportioning representation according to white population only, if that should be understood to mean according to the qualified voters, would be intent on making every white man a qualified voter. That this was the effect of the argument, soon appeared from the sentiments avowed by one of his own colleagues (Mr. McCoy). The gentleman from Augusta has thus lent the most efficient aid to the principle of Universal Suffrage; which, I am sure, he deprecates as earnestly as I do. He has borne a main part in bringing us into this fearful strait between *Scylla* and *Charybdis*; and, confidently trusting that the Siren's voice cannot lure him to the fatal shore, I implore him to lend *me* his aid, now—or rather, to put his own strong and skilful hand to the helm, and, if possible, save us from being dashed against the impending rock of destruction. Our hopes of avoiding the whirlpool which threatens to engulf all, must rest on others.

There is, Sir, one feature in the resolution of the Legislative Committee on this subject, so strikingly unjust, I may say, so glaringly absurd, that I can hardly think it was intended; but I mentioned it here, some days ago, and no friend of the principle of the resolution, has proposed any amendment of its details in this particular. Observe, Sir—the resolution provides, that the owners of the smaller freehold estates in land, shall not be allowed to vote, unless their land be of a certain assessed value, though the owners must pay some land tax, no matter how trivial the value of their land may be; but, if a house-keeper and head of a family shall reside on one of these small freeholds, as tenant of the owner or by his permission, paying any revenue tax, of what kind or how trivial soever, such house-keeper and head of a family shall be allowed to vote, though his landlord shall not. Can this be right? Can it possibly be intended? I must still think, that it is to be imputed to inaccuracy in the details of the resolution, which will be, as it easily may be, corrected: and I mention it now again, as I did before, chiefly for the purpose of shewing how cautious we ought to be against indulging in an intemperate zeal for innovation, miscalled reform, lest we run into gross inconsistencies, and produce new and greater inconveniences or wrongs than those we propose to remedy.

Permit me now, Sir, to explain succinctly my own proposition.

In the first place, I propose, that all who now enjoy the Right of Suffrage, shall continue to exercise it. According to the existing provisions of the Constitution and laws on this subject, it is land, a freehold estate in land, of a certain quantity, without regard to its quality or value, which ascertains the right of the owner to vote.* We are told,

* For the existing freehold qualification of Suffrage in Virginia, see Rev. Code, vol. I. c. 51. § 3—
 “Every male citizen of this Commonwealth, aged twenty-one years, (other than free negroes or mu-

that these regulations operate very unequally; for that, in some parts of the State, land is worth ten, twenty, fifty dollars per acre, while in other parts, and often in the same county, it is worth less than a dollar per acre. And this is very true. Again we are told, that, in many parts of the State, there are large tracts of barren land, and in the Western country, particularly, vast bodies of mountainous land unfit for cultivation; that these lands afford the holders of them the means of creating freeholders and voters, *pro re nata*, to answer occasional electioneering purposes; and that this is a shameful and intolerable abuse. And, since the meeting of this Convention, I have heard the existence of this abuse, in some parts of the Western country, to a very enormous extent, asserted by a delegate from that quarter of the State; but to my great satisfaction (though, considering from whom the first information came, much to my surprise) I have since heard the fact of such abuses being either frequent, or carried to any great extent, strenuously denied, on this floor, by another gentleman from the same quarter. Some abuses of the kind, I doubt not, there have been, in the West and in the East too; but, upon reflection, I cannot but think, that they must have been very rare. For, the provision of the election law, which requires that the title in the land, unless derived by marriage, descent or devise, shall have been acquired six months before the owner of it presents himself at the polls to vote, which was intended to prevent such abuses, must, in practice, have proved generally effectual to prevent them; since it cannot often happen, that the person who desires to make a voter by making a freeholder, does or can foresee the want of the vote so long before the election at which it is to be given. Such abuses too, are in their nature, very open to detection, and easy to be exposed. Although, therefore, I am sensible, that the existing regulation of the Right of Suffrage, does operate unequally, by reason of the inequalities in the value of lands—and although it may be liable (for what regulation is not liable?) to some abuse—yet I am very sure, that it brings to the polls, the great body of the settled residents of the Commonwealth, the free, allodial cultivators of the soil for their own use; and admits but few, very few others. Imperfections there may be in the present regulation—but imperfections which ought not to condemn it—such imperfections as are incident to all general regulations, and indeed to all human institutions; such as perhaps, it would be hardly possible to avoid. Besides, Sir, I hold that there is a wide difference between the refusal in the first instance, to confer a right, which ought not to be conferred, and the taking away a right, which has been already conferred and long enjoyed, because in justice and good policy it ought originally to have been withheld. If I had found the Right of Suffrage extended ever so far beyond what I consider the proper point, however I might have lamented it, I should have hesitated long before I touched it. Imperious necessity only should have induced me to assent to new restrictions. There is no such necessity here. Though a freehold of twenty-five acres of land in Jefferson, may be worth five hundred dollars, while the like quantity of land on the sandy ridges of the East or in the broken mountainous districts of the West, may not exceed in value fifty or even twenty dollars, still the owner of the one, cultivating it for his maintenance, has a common interest in the soil, as well as the other, and is affected by whatever affects the general interests of the State or the local interests of his own county. I have explained my views on this point the more fully, because I know there are some gentlemen who differ with me in opinion concerning it, while they concur with me as to the general principle of a landed qualification.

In the next place, I propose to extend the Right of Suffrage to all freeholders of land, which though not equal in quantity to that now required as a qualification, is yet equal in value to the average of the smaller freeholds which now constitute the qualification. A man may be the owner of one or two acres of land, with a mill,

lattoes, or such as have refused to give assurance of fidelity to the Commonwealth,) being possessed, or whose tenant for years, at will, or at sufferance, is possessed, of twenty-five acres of land, with a house, the superficial content of the foundation whereof is twelve feet square, or equal to that quantity, and a plantation thereon, or fifty acres of unimproved land, or a lot or part of lot of land in a city or town established by act of General Assembly, with a house thereon of the like superficial content or quantity, having, in such land, an estate of freehold at the least, and unless the title shall have come to him by descent, devise, marriage, or marriage settlement, having been so possessed six months, and no other person, shall be qualified to vote for delegates to serve in General Assembly, for the county, city, or borough respectively, in which the land lieth. If the fifty acres of land, being one entire parcel, lie in several counties, the holder shall vote in that county wherein the greater part of the land lieth, only; and, if the twenty-five acres of land, being one entire parcel, be in several counties, the holder shall vote in that county wherein the house standeth, only. In right of land holden by parceners, joint tenants or tenants in common, but one vote shall be given by all the holders capable of voting, who may be present, and agree to vote for the same candidate, or candidates, unless the quantity of land, in case partition had been made thereof, be sufficient to entitle every holder present to vote separately, or unless some one or more of the holders may lawfully vote in right of another estate or estates in the same county; in which case, the others may vote, if holding solely they might have voted: *Provided, nevertheless*, That no person inhabiting within the District of Columbia, or elsewhere, not within the jurisdiction of this Commonwealth, shall be entitled to exercise the Right of Suffrage therein, except citizens thereof employed abroad in the service of the United States, or of this Commonwealth, and whose foreign residence is occasioned by such service."

tannery, or other fixtures upon it, equal or far exceeding in value, many tracts of fifty acres of unimproved land, or of twenty-five acres with a small dwelling house upon them. I would extend the Right of Suffrage to freeholders of this class; to all freeholders of land of a certain assessed value; say, fifty dollars, or if you please, twenty-five dollars—I am not particular about the sum with which the blank shall be filled. Then, Sir, I propose to extend the right, to all parceners, joint tenants and tenants in common, of lands of such an assessed value, that the share of each shall be equal in value, no matter how small in quantity, to the value of the small freeholds held in severalty, which I have just now described. I propose to extend the right, further, to all remainder-men and reversioners in fee, expectant on estates for life or lives, so that the assessed value of the land be such that the estate in remainder or reversion may be fairly estimated at an equal value with that of the small freeholds held in possession. I know that the value of such interests depends on the complement or duration of life of the tenant in possession; but there is no occasion here for the accuracy which would be proper in making a bargain; and a general rule may be easily laid down, which will answer the present purpose; as if we should estimate the life estate equal to one-third, and the remainder in fee equal to two-thirds, of the whole fee-simple value of the land, and regulate the extent of this particular qualification accordingly. Lastly, I propose to give the Right of Suffrage to all tenants for years, holding under leases renewable at their own option, upon the payment of a fine or performance of other condition. These are estates for years, only in name; they are, in truth, fixed, permanent and independent interests. Such leases are generally purchased for a consideration presently paid; and only a ground-rent, very small and very far short of the annual value of the property, is reserved. Such lessees are little, if at all, dependent on the favour of their landlords. But I would require, that the property should be of a given value; if estimated with respect to the value of the fee-simple, it should be somewhat greater than the assessed value of the small freeholds; if estimated with respect to the amount of rent reserved, that should be very small. I am at present regardless of details, being only desirous to explain the principle on which I propose to regulate the Right of Suffrage, which is, to require some certain, fixed, permanent, independent interest in land, as the qualification of the voter. And to any extent to which this principle can in reason be carried, to that extent I am willing to go: but, to go farther—to depart, in any degree, from the principle of a substantial and permanent landed qualification—this is what, in my opinion, the true theory of pure Republican Government, and all experience of the practical operation of political institutions, at home and in our sister States, far from dictating to be done, warn us not to do.

The Legislative Committee proposes to extend the Right of Suffrage, to every leaseholder of a term originally not less than five years, yielding an annual rent of a certain amount, though but a month or a week of the term shall be left unexpired when the lessee shall present himself at the polls; and to every person, who for twelve months next preceding, has been a housekeeper and head of a family, within the county or town where he may offer to vote, and who shall have been assessed with, and shall have paid, a revenue tax, of any kind, on any subject, or to any amount. As to these housekeepers and heads of families, which the proposition distinguishes from tennors of five years, as well as from freehold owners of land, they must be persons resident on the lands of others—they must be either tenants from year to year, paying rent—or tenants at the will of others, on whose bounty they are dependent for a home and a shelter—or squatters, who have trespassed and seated themselves on the lands of others. These last, to be sure, may be independent of the owners of the land, and ready enough, quite too ready, to set them at defiance; and they, I hope, are not within the intent, though they are within the words, of the new regulation of the Right of Suffrage, which the Legislative Committee has proposed to us. But what will be the condition of the tenant at will, who is indebted to the mere bounty of his landlord, for the shelter that covers his head? or of the tenant from year to year, or of the tennor of a five years lease, rendering a rent quarterly, half-yearly or yearly, equal to the full annual value of the land? Is it expected, is it really believed, that men in this situation, will or can vote without any regard to the wishes of their landlords? that the tenant, when he goes to give his vote, will have no care to conciliate the favor, or to avoid the resentment, of the man, who may issue his distress warrant whenever the rent is in arrear, and take the bed on which his sick wife is lying, or the cradle from his new-born child? Sir, the landlord holds such a tenant by the very strings of his heart. He has the power, with the slightest twitch, to drag him to the polls, and to dictate his vote. Not the pusillanimity only, but the very virtues of the man, may serve to ensure his dependence, and implicit obedience to the master-power which constrains his will. If the landlord be indulgent and kind—if with power to exact his due by summary process of distress, he yet forbears to do so, out of a kind regard to the interests of the tenant, or a generous sympathy with any misfortunes which have befallen him, he binds the tenant to him

by favor: if there be gratitude in the human heart, such a tenant will respect the wishes of such a landlord; and the case will be rare indeed, in which he will hesitate to give his vote at the polls, according to the landlord's desire or suggestion, or his slightest hint. On the other hand, the hard and rigorous landlord may address his dictation to the distresses or fears of his tenant; and may, in general, command his vote, by the terror of a constable at his door, with a distress warrant in his hand. The poor man, who loves his wife and children, will look to their welfare and comfort as the first object of his care, and will find in the pride of political independence, no consolation for the misery in which it may involve them. Thus it is, Sir, that all extremes approach. This extension of the Right of Suffrage, professedly (and, I will not doubt, sincerely) designed to raise the poor to a level with the rich in political power, will only increase the power of the rich: for, it may safely be affirmed, as a general consequence of the principle, that, to give the Right of Suffrage to tenants at will, the mere dependents on the bounty of the rich, or to tenants from year to year, or to your termors of five years, rendering a full rent, is, in effect, to give the landlord as many votes, in addition to his own, as he has tenants. We have all heard of the interest of landlords of England in their counties—an interest transferable at their pleasure, which is continually influencing, and often determining, the fate of elections. What is it? how acquired? and how exerted? The explanation is very simple. The great landholder lets to his tenant a petty forty shilling freehold, which qualifies him to vote in elections; and with this, he leases to him a farm for a term of years, at a full rent of £50, £100, or £500, with a clause of re-entry, and the legal power to distrain, for rent in arrear. Such a tenant is expected to give his vote, whenever he shall be called upon, according to his landlord's will and pleasure, just as much as he is expected to pay his rent when due; and the vote, is given, as certainly, I doubt not far more certainly, than the rent is paid; it being the only part of the consideration, which the tenant finds no trouble in paying. I shall be told, no doubt, as I have been often told, that *we* may rely on the political virtue of this people, as a complete safeguard against the exertion, or even the existence, of any such influence of the landlord over his tenant. The virtue of the people is resorted to to solve all difficulties. To me it seems passing strange, that an argument should be drawn from the present existence of political virtue, against the system, under which that virtue has grown up and attained its utmost strength, and in favor of a new principle, the obvious tendency of which is, to expose that virtue to temptation and corruption. And, with regard to that political influence, which a landlord may acquire over his tenant, by kindness, indulgence and favor, it is quite obvious, that the virtues both of the one and of the other, far from tending to counteract such an influence, have a tendency to beget, to foster and confirm it. I own, that, at this time, and perhaps for some ten or fifteen years to come, it is not probable, that any landlord will dare to exercise a political influence over his tenant, by a rigorous exertion of the powers which such a creditor has over such a debtor; but the time may come, the time sooner or later will surely come, when, in the agitation of those violent political contests, which certainly no man hopes or believes to be impossible or improbable in this Commonwealth, and which are so peculiarly calculated to excite the passions of men, and to make them regardless of the political morality of the means by which party purposes can be accomplished, we may expect to see landlords exerting their influence over their tenants, in whatever way such an influence may be most effectually exerted. Let there be one successful example of the kind, and there will soon be imitation enough; and the exertion of this corrupt and corrupting influence, which viewed at a distance and in the abstract, is an object of just abomination, will soon come to be regarded, as natural, fair and legitimate. What expedient will then be resorted to to preserve the tenant's independence, and exempt him, as a voter at the polls, from the influence of his landlord? Sir, I have heard it hinted already—not yet indeed openly upon this floor—but it has been hinted, that the remedy is quite obvious and easy—only abolish the right of the landlord to distrain for rent in arrear. Suppose it shall be adopted—as in my conscience I believe it will be, and that at no distant day—what then? Would the genius of reform also deny the landlord his action of debt to recover his rent, and his execution to enforce the judgment? Shall all clauses of re-entry for non-payment of rent, inserted in any lease, be declared null and void by statute? The very suggestion of the possibility of such expedients to counteract the tendency of the proposed extension of the Right of Suffrage, is the strongest sentence of condemnation of the principle itself, since it serves to shew, that the adoption of it is only a prelude to a direct attack upon the rights of landed property.

It may be thought extraordinary, that I, who maintain, that property is justly entitled to representation—that, being inert in itself, to take from it all influence in the Government, would be to make it, not an object of the most jealous care (as it ought to be), but an object of plunder—that I should, nevertheless, reject the proposed extension of the Right of Suffrage, on the ground that it tends to increase the political

influence of the fee-simple owners of land. And, to my knowledge, there are some to whom the proposed extension of the Right of Suffrage is recommended, precisely by the consideration which I have been urging as a vital objection to it—namely, that it will increase the political influence of the landholder. Sir, I am for giving property a fair, just, direct influence in the Government—an influence little (if at all) liable to abuse—an influence, which promotes, instead of undermining, public virtue; an influence, which obviates the possibility of corruption—that kind of influence, which it has hitherto had in this Commonwealth, and which has contributed, above all things, to the preservation of political purity in the community at large, and in the administration of public affairs. But, regarding public virtue as essential to the very being of a Republic, as the vital spirit which animates healthful liberty, and makes her the parent of every blessing and the dearest object of our affections, I shall be the last man to give property that kind of influence which can work only by corruption; an influence, which will corrupt alike the citizen by whom it shall be exercised, and the citizen on whom it shall be exerted.

Sir, these house-keepers and termors of five years, stand in a relation towards their landlords, to which the influence of the one, and the dependence of the other, are, in my opinion, almost inseparably incident; and, therefore, they are the last class of men (except paupers) who ought to be admitted to the polls.

I am, Sir, for retaining, unchanged and unimpaired, the *principle* of the freehold qualification of the Right of Suffrage, as established by the existing Constitution and laws, only extending the right to such as come within the reason on which the principle itself was established by our forefathers. Shall I be again told, that the Convention of 1776 found this principle in the Constitution of the Colonial Government, and preserved it unaltered—that it was copied from the institutions of England—that it was in truth dictated to us, originally, by King Charles II. in 1667—and that its origin and its history stamp upon it, indelibly, the odious character of aristocracy? Whence did we derive the institution of jury-trial? Whence the principle of representative Government itself? Did we copy them from the Republic of Rome, or the democracy of Athens? Were they suggested by the wisdom of Aristotle, or of Plato, or of Tully? Are gentlemen prepared to abolish the institution of jury-trial, and the principle of representative Government itself, merely because they are (as undoubtedly they are) of English origin? Are they prepared to draw the very blood from our veins, because that too is derived from British ancestors? Are they prepared to abrogate the whole body of the Common Law, because it is the Common Law of England?—that Common Law, which our ancestors brought with them to this land, and claimed and enjoyed as their birthright—that Common Law, the genius of which is found standing by the side of liberty, wherever liberty is found upon the globe, her companion and her handmaid. As to the freehold qualification having been dictated to the Colonial Government of Virginia, by a royal mandate in the reign of Charles II., I do not question the fact; nor have I the least doubt, that it was a high-handed arbitrary measure, transcending the lawful authority of the crown, and essaying to usurp powers, which the Constitution of the Colonial Government (such as it was) vested in the whole Legislature: but it is not true, that the freehold qualification of Suffrage was established in the Colony, by force of the royal mandate; it was established and regulated by the only competent authority—by an act of the whole Legislature. He who attributes this measure to the personal interference of Charles, has given very little attention to the character or history of that scoundrel King (as he has been justly called.) It was only a measure of that reign—a measure of the minister, whoever he was, that was charged with the care of Colonial affairs—and it was intended, as it certainly was calculated, to give stability and dignity to the Colonial Government. The King himself, intent only on sensual gratifications, pleasure and ease, hardly bestowed a serious thought on the condition of his subjects at home, much less on the political institutions of his distant Colonies. But this freehold qualification of Suffrage in Virginia, was a measure of Charles's reign! So was the act, which is now the great safeguard of personal freedom, in England and America—the act which secured the privilege of the writ of *Habeas Corpus*! I hope, Sir, we shall hear no more declamation on this subject—no more addresses to our prejudices: I hope we shall discuss the merits of the freehold qualification of Suffrage, as a question of political expediency, or (if gentlemen please) of political justice, or natural right, without the least consideration of the Colonial or English or regal source, from which it was originally derived.

In the various discussions I have heard on the subject of the qualification of the Right of Suffrage, as well before as since the meeting of this Convention, I have understood those who are opposed to the freehold qualification, to contend, that the Right of Suffrage belongs, of *natural right*, to all men who are subject to the Government, and bound to contribute to its support, and to bear arms in defence of the State. Now, Sir, for my own part, I am incapable of conceiving any *natural right*—(a right, distinct from, antecedent to, independent of, social conventional law—a right inherent

in man, derived from the law of nature, and with which he is indued by the God of nature)—which is not common to every human being. Take the definition of the first article of the Bill of Rights: "All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." It is manifest, these rights belong not only to every man who pays public taxes and bears arms, but also to every woman and child in the community. Again; natural rights are rights inherent in man, vested in him before he enters into society, distinct from and independent of social institutions. Can there be a greater contradiction in terms, than to say that the Right of Suffrage is one of these natural rights, pertaining to man in a state of nature?—the Right of Suffrage, which supposes a state of society—which can never be exercised, which can have no value, no effect, and no imaginable ideal existence, till society is formed and regulated by laws, nor indeed till it has attained to a very high degree of civilization and refinement. The friends of Universal or (as it is now the fashion to call it) General Suffrage, are themselves obliged to admit, that it is not a natural right—that it is a merely conventional right: for, at the first stroke of the pen, they exclude from the polls all women without exception, that is, about half of the community; and then, all minors, that is about half of the male sex; and then, all paupers and convicts—so that this right, which gentlemen claim as one of the natural rights of man (and if so common, to all mankind), they themselves propose to confine to less than a fourth of the people. We all agree, then, that the Right of Suffrage is a subject of conventional regulation—we all agree, that some limitation of it, and a very extensive limitation too, is just and necessary. The question is, what qualification is the most just, the most politic, the best suited to the nature and ends of a Representative Republic, and, in particular, to the peculiar circumstances of this Commonwealth? The question between us, is only a question of degree. And believing, as I do most conscientiously believe, that the landed freehold qualification is preferable, far preferable, to any other that can be devised, I am bound to maintain it with the utmost exertion of my poor ability.

Gentlemen say, it is imperfect—that there are lazy, idle, drunken, vitious men, who hold freeholds which may entitle them to vote, while their next neighbour, though ever so industrious, honest and intelligent, may be excluded from the polls, because he owns no freehold—that the man who owns a freehold to-day, and sells it to-morrow, is in all likelihood equally worthy to be entrusted with the exercise of political power after he has made the sale as before, and that the purchaser can hardly be deemed more worthy, the day after than he was the day before he made the acquisition—that, surely, intelligence, or independence, or any of the social virtues, cannot, with truth, be ascribed to all the freeholders, or denied to all the non-freeholders: and I admit all this. It has been said too, that there are freeholders who are paupers; but that I cannot conceive the possibility of. But I admit, that the freehold qualification is imperfect. What then? I still say—and I appeal to every man who hears me, whether or no I say the truth—that, in Virginia, the great mass of intelligence and virtue resides in that stout and generous yeomanry, the freeholders of this land; that to them belongs not only all the real property of the Commonwealth, but almost all of the personal property also; that they are the class, who feed, who clothe, who educate all classes; who hold the greatest stake in society; who are the only persons who have any stake that may not be withdrawn at pleasure, in the twinkling of an eye; who, therefore, have, and actually take, the deepest interest in the public welfare. They alone support Government, constantly in peace, as well as occasionally in war—they fight as well as pay—and they feed and clothe and pay all who do fight. It has been my lot to mix, a great deal, in the society of these freeholders—aye, Sir, with the very poorest of them. I think I know the character of our poor freeholder perfectly. Look at him—modest, unobtrusive, and unassuming, in his manners and deportment, almost to humility, the idea has never entered into his head, that he is a nobleman—the limb of a great aristocracy: on the contrary, the first impression of a stranger would be, that he is not sensible of his dignity as a freeman. But try him—go to his house, and you will find him, and especially his wife, hospitable to the utmost of their means—trust him, and you will find him proudly faithful to his trust—appeal to him in any distress that may befall you; you will find his heart warm with generous sympathy, and his hand ready to aid you—Do him a service or a kindness, he will remember it to the latest hour of his life; and if ever opportunity occurs, he will pay it back to you, or after your death, to your children, with interest—let any one wrong him; he knows as well as the wisest, how to seek and obtain redress—insult him, and he will fight you. I copy the portrait, Sir, from the picture of the original painted on my own heart. I can hardly imagine a higher degree of virtue, public or private, than that of the great body of the freeholders of Virginia. Has one man of them all ever been bribed for his vote? has any gentleman ever heard of

a single instance? The wealth of this Commonwealth cannot bribe the freeholders of that little despised county of Warwick, so often referred to, on account of its size, as the opprobrium of the existing Constitution. I say, therefore, that the freehold landed qualification—though it is not absolutely perfect, as I willingly own it is not—though, like all other general regulations, it may admit some to the polls, who, if regard could be had to their individual character, ought to be excluded, and excludes some, whom, regarding individual merit, all would be willing to admit—is still, in Virginia at least, if not in all Republican States, the preferable qualification of Suffrage—the best criterion for ascertaining the class most worthy to be entrusted with the political powers of the State.

No general regulation on the subject, can be exempt from imperfection. We all (I believe—I am not quite sure of it) concur as to the qualifications of sex and age—that all women and all minors, without exception, ought to be excluded from the polls. Yet, I presume, no man entertains the opinion, that there is not a single woman, that there are not many, very many women, fully equal to the most meritorious of the other sex, in intelligence, in public spirit, and every other quality that constitutes a good citizen. I have known women, Sir, who possessed, not only the gentler virtues of their sex, and passive fortitude (in which, I think, they generally surpass men), but such active courage, as might shame many of the stronger sex. Is that a perfect rule, which excludes all women, the firm and wise, as well as the silly and the vain? As to the qualification of age, we all concur in admitting to the polls, the most imbecile of mankind—men in the last extremity of dotage—men of any degree of mental weakness short of legal incapacity to manage their own affairs—while we exclude all youths under twenty-one years of age, whatever be their attainments or their merits. Considered, then, in reference to individuals, gentlemen must perceive, that even these qualifications of sex and age, which as yet no statesman surely has ever doubted the propriety of, are imperfect.

Let us not waste our labour in a vain search after unattainable perfection in our political institutions. If, in regulating the Right of Suffrage, we can find a rule which will exclude the fewest of those who ought to be admitted, and admit the fewest of those who on any account ought to be excluded, with that rule we ought to be content. And I shall forever maintain, that (in this Commonwealth particularly) the freehold qualification is that rule.

It is, I suppose without question, the object of us all, to establish a wise, just, patriotic, Republican Government. And, looking to the accomplishment of that end, I insist, that to ensure wisdom in the Government, and a strict observance of justice, and a spirit of patriotism in the administration of public affairs, we ought to vest the Right of Suffrage (the fountain, in our system, of all political power) in that class of men, in whom we find, generally, the greatest degree of moral and intellectual cultivation; in that class of men, who, holding the property of the State, are the most interested in the administration of justice; in that class of men, whose own interests are the most completely identified with the interests of the Commonwealth. And this is the class of freeholders.

Now, Sir, is the freehold qualification contrary to any sound principle of Republican Government? Gentlemen insist that it is—and they appeal to the Bill of Rights, in which it is declared, that “all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the Right of Suffrage.” We acknowledge the principle, in its utmost extent—but we tell them, that it is only the general abstract principle, and that the question is as to its application in practice—what is the sufficient evidence of common interest with, and attachment to, the community, which ought to be required as the qualification of Suffrage? We tell them, that the very men, who laid down the abstract principle, did, at the very same time, in their practical application of it, require a freehold in land, as the qualification. The only answer they give us, is, simply, to repeat the principle: relying on the authority of the Bill of Rights for the principle, which nobody disputes, and rejecting the authority of the Constitution, framed by the same men, as to the practical application of it, which is the point in debate, they eternally repeat the principle. Now, I affirm, as the Convention of 1776 affirmed in the Constitution, that a freehold, or other certain, permanent, independent interest, in land, is the best and the only sufficient evidence of permanent common interest with, and attachment to, the community.

For, I think it may safely be assumed, that not only all the land of the country is owned by the freeholders, but at least nineteen twentieths (I believe the proportion is much greater) of the visible, taxable, personal property also is owned by them. Suppose one of these men purposes to sell his land, and migrate to the West; still he is interested in whatever affects the general weal of Virginia, to the last moment he holds the land, since he cannot divest himself of his interest in its value. But mere personal property has no locality. Slaves without land to work them on, are more valuable in the South Western States than here. Money, Bank stock, stock in the public funds, are of equal value every where: the owners of such property (it is with us,

a very small part of the national wealth) have not, by reason of such ownership, any common interest with or attachment to our community, in any sense of the words.

I shall forever contend, that those who must bear the burden of paying taxes, ought to have the power of laying them. Is it right, that the land-holders of Virginia, who must pay almost the whole revenue of the State, as well that raised on land, as that raised on personal property, should be taxed by those who pay little or nothing, and who by no contrivance can be made to contribute more?

There is another view of this subject, which is very obvious, and yet seems to have altogether escaped the attention of those who deny the propriety of the freehold qualification. The Commonwealth of Virginia has three several classes of political interests. One is the interest she has, in common with all the States of the Federal Union, in relation to foreign nations; this is confided to the Federal Government. Another is, the interest of Virginia, in relation to the Union, and to the several States which compose it; this is confided, partly to the Federal, and partly to the State, Government. In regard to both these classes of interests, every citizen of Virginia has, or ought to have, the same common interest. But, as to the other class, the local interests of the several parts of the State in relation to each other—which are confided exclusively to the State Government—which are continually brought home to every man—I defy the wit of man to discover any evidence, or devise any cause, of community of interest with or attachment to any particular county, other than the ownership of land in it. What is the bond, which attaches the resident of the county of Chesterfield, who has only a slave, or a horse, or a gainful trade, to the peculiar interests of that county, more than those of Henrico? What is his community of interest with the people of Chesterfield, for whose representative he is to vote? I pray gentlemen to tell me; to tax their ingenuity, to exercise their invention, or their imagination, and point it out to me, if they can. There is none; none conceivable.

There are those who affect to think, that the mere fact of the citizen being born in the State, is enough to attach him forever to the interests of the Commonwealth, and even of the particular county in which he is born; and that birth, therefore, with actual residence and mature age, is a sufficient qualification of the Right of Suffrage. I wish I could think this reasoning well founded in fact. For my own part—though I have never avowed the sentiment without exciting a smile—I yield all pretensions to philosophy, and I am proud to own, that I cherish a narrow attachment for the spot of earth where I was born, and where sleep in peace the ashes of my parents, and of all the dead whom I have loved and honoured in my youth; and a grateful affection for the people among whom I was bred, and from whom, from my childhood to this hour, I have been experiencing continual kindness. Would to God, this sentiment was general! But we see men, every day, leaving this their native land, and migrating to the most distant regions of the West, without a single pang at the separation from the home and the friends of their youth, and with no concern but that which springs from the thought of their being obliged to pay for the land they have bought of the United States.

While the freehold owners of the land, being owners also of the great mass of visible taxable personalty, have a community of interest, of which they never can divest themselves, with every other class of the community, the other classes have no necessary community of interest with them. Retain the powers of Government in the hands of the freeholders; and they can never adopt any course of measures, or impose any public burdens, which will not affect themselves equally or more than the non-freeholders. Place the Government in other hands than theirs; and they may be ground to dust and ashes by those who have no fellow-feeling for them. All men, we are told, are by nature equally free; and thence it is inferred, that every man is equally entitled, in a political way, to dispose of the property of others. The direct contrary is the true inference—that every man is best entitled to dispose of his own. This principle intended to operate as a protection of the rights of individuals from the power of others, and expressly so applied by those who declared it, is converted into a principle of power over others. Sir, these manifold perversions of the plain words and simple elementary truths of the Bill of Rights, which I daily hear, are, to my apprehension, the most alarming symptom of the times: they jeopard the very principle of property; they portend serious danger to all regular Government.

But it is contended, that the freehold qualification is an odious system of exclusion; and every word we have heard on the subject here—and all the reasoning of that famous memorial, which was presented to us at the commencement of our session, and which has been so much lauded—proceed on the assumption that this is the true character of the principle. A stranger unacquainted with our institutions, and relying for information concerning them on the language of our reformers, would conclude, that the freeholders constitute a separate and higher rank in our society, and the non-freeholders an inferior degraded caste, from which the one can never rise, nor the other descend; that the freeholder can never part with his qualification and cease to enjoy the Right of Suffrage, nor the non-freeholder acquire it. Yet, in truth, there is not

the least restraint on the alienation of freehold lands in Virginia; and every farthing's worth of real estate is open to the fair and honest acquisition of all. No law secures the possession of the soil to luxury and idleness, or denies it to honest labour and persevering industry. An odious system of exclusion! where every man may acquire freehold estate in land enough to confer the Right of Suffrage for fifty dollars. There is not a county in the State (unless, perhaps, the county of Jefferson) where a sufficient freehold may not be bought for fifty dollars; in many counties, it may be bought for twenty, in many for five dollars. No honest industrious citizen is excluded, who chooses to gain admission; no, none but the veriest paupers and drones in the community, whom all agree upon excluding. An interest in the soil is only required, because it affords the best and only certain general test of community of interest with the great body of the State. It was, then, with surprise, ineffable surprise, that I heard the information which the gentleman from Monongalia (Mr. Wilson) gave the Committee the other day—that in his part of the country, men of the highest merit, “of civic virtue and literary talent,” debarred by the requisition of the freehold qualification from exercising the invaluable Right of Suffrage, and disgusted with this “odious exclusion,” this degradation from the rank of citizens, were seen to abandon their native land, and seek “in the free States,” that equality with others which our institutions sternly deny them. I should be glad to know of the gentleman, what a sufficient freehold to give the Right of Suffrage, would cost in the county of Monongalia? I suppose it might be bought for ten dollars; twenty dollars would be a large estimate. And if these gentlemen of “civic virtue and literary talent” felt, so very acutely, the evil and degradation of their exclusion from the polls—if an attachment to this State formed any ingredient in their “civic virtue”—if their taste for literature had not spurned the vulgar processes of calculation—they would have considered, that the expense of the first hundred miles of travel, in their emigration to “the free States,” would have sufficed to purchase a freehold at home, and this invaluable Right of Suffrage into the bargain. The very facility, with which, for the slightest or for no reason, these non-freeholders abandon the State, of which we have now, from one of their advocates, the most authentic information, is conclusive proof to my mind, that it is wise to exclude them from the polls—precisely, because it evinces, that they have no permanent common interest with or attachment to the community.

The war of epithets too, which I hoped had spent its rage in the debate upon the question of the basis of Representation, has been renewed upon this question of the qualification of Suffrage. The freehold qualification is a remnant, a shred, a taint of aristocracy, which we ought carefully to expurgate from our political institutions! Any person is at full liberty to think me an aristocrat—aye, and to call me so, if he pleases—provided it is not done with design to insult me: I have no office to gain; no office, no emolument, no political fame or consequence to lose—naught is never in danger—political proscription cannot harm me. I shall still enjoy the personal confidence of the generous people, whom it is my pride to represent here—I shall still enjoy the affections of all those whose regard is at all necessary to my happiness in life—these I can only forfeit by departing from the course (I wish I were sure I could persist in it) of virtue and honour: and as loyalty of personal attachment is with me a ruling motive and principle of action, so I look to it as my principal solace and support. I, therefore, trust, that I shall have the fortitude to bear any political odium that can be heaped upon my head; and the courage to face any clamour that can be raised, however fierce and loud. To constitute the *justum et tenacem propositi virum*, it is not more necessary that he should be capable of withstanding the *vultus instantis tyranni*, than that he should be capable of beholding, unmoved, the *civium ardor prava jubentium*. The freehold qualification is aristocratical! Was Patrick Henry an aristocrat? was George Mason? was Edmund Pendleton? was Spencer Roane? Were all the great and good men in Virginia, since the revolution, who have, so steadily, so anxiously adhered to this principle, aristocrats? Has Virginia herself been aristocratical for these fifty-four years past? Is this blasphemy of our glorious forefathers to be endured? I understand the term “aristocracy,” to describe political power vested in a particular order of men, either designated by birth, or by election for life, which, by the Constitution of the State, is unalienably vested in them, and in which no other order of men in the community, can, by any act of their own, participate. Generally, in Governments where orders of nobility are admitted, the rank and the political power incident to it, are descendible. But what is the condition of this nobility of ours—this aristocratic body of freeholders? The freeholder sells his land to the plebeian non-freeholder: the plebeian is exalted to the patrician order, and, *eodem flatu*, the patrician descends into the plebeian; and these ups and downs are continually going on. Even gentlemen's termors for years, and house-keepers, are nobility too, if enjoying the Right of Suffrage gives the patent of nobility; but, in their case, the landlord has only to say “quit,” and not only their patent of nobility is revoked, but they are turned out of house and home. To call the freehold qualification aristocratical, if not a wilful abuse of words, implies a confusion of ideas.

But if this institution is not an aristocracy, it is an oligarchy—the Government of a few (for that, I believe is the meaning of the word)—the number of freeholders does not amount to a moiety of the free white citizens of the Commonwealth, of full age, who contribute to the public revenue! I know who it was that first said it—and I know how little logic can avail to refute faith—but if undeniable facts have any virtue in argument, our opponents have been at the pains to collect such facts as common reason, not sustained by faith, will hardly be able to resist. They have called on the Auditor, for “a statement of the number of persons in each county and town charged with a State tax for the year 1828”—and, for “a statement of the number of persons, charged on the land books of 1828, with taxes on a quantity of land not less than twenty-five acres, or on a lot or part of a lot in town.” These statements have been laid before us.* The first ascertains the number of tax-payers, to whom it is proposed by some to extend the Right of Suffrage; the other ascertains with sufficient accuracy, the number of freehold estates of the extent which gives the Right of Suffrage. And it appears, that the number of freeholds is ninety-two thousand eight hundred and fifty-six—and the number of tax-payers only ninety-five thousand five hundred and ninety-three. There ought to be a deduction from the number of freeholds, on account of the double, or rather the manifold charges of the same land on the commissioners’ books of the Western counties, in consequence of the number of patents that have been issued for the same tracts: my friend from Spottsylvania (Mr. Stanard) thinks this deduction ought to be ten thousand—which will leave the number of freeholders about eighty-two thousand. The deductions of *femes covert* and minors are to be made equally from both lists. It is apparent the number of freeholders is to that of the tax-payers (which, of course, includes all the freeholders) more than eight to ten. And, then, we have an oligarchy—a Government of a few—vested in more than eight-tenths of the people!

I have no doubt myself, that a great many of the tax-payers, who are not also freeholders, are the adult sons of freeholders, not yet married and settled in life; because whoever owns a horse, pays a revenue tax; and, among that class of people in Virginia, who, in my part of the State, are called *good-livers*, the first present, which a father makes to his son, when he puts on the *toga virilis*, is a horse; which horse makes that son chargeable with a State tax. And, gentlemen ask, why are the sons of freeholders—those sons, who are to inherit the lands of their fathers—those sons, who have a common interest in the soil with their fathers—why are they excluded from the polls? I believe, there would be little or no practical difference, in the mere result of elections, between the admission and the exclusion of them. But suppose them admitted: the sons would either vote with their father, or against him. If they should vote with him (as it is to be expected they generally would) the result would only be, to give the father as many votes, in addition to his own, as he has sons of full age. If they should vote against him (and a puppy scoundrel son may take a pride in voting against his father) then they would only countervail their father’s vote, and stifle his voice in the Government—which can only be justified by that very peculiar trait in the natural history of man, which is found in this country, (such is the march of mind), though never imagined to exist in any other age or nation under heaven; namely, that the son is, of course, wiser than his father. Has it come to this pass? Are the sons of this land to be taught, that they cannot safely trust the political powers of the State, to their own fathers? Not only are all sentiments of generous chivalry to be decried, renounced, banished from our society—not only is the order of private gentleman to be abolished, as aristocratic and odious—but even filial piety is to be discouraged as incompatible with civil liberty. What manner of democracy is this which teaches these doctrines of impiety and abomination? Not that democracy which our fathers loved and cherished—no, Sir; but a siren democracy—gifted with the voice of the charmer, indeed, and with face and breast of maiden beauty, but declining into a foul and scaly serpent armed with mortal sting. *Procul! O Procul!* Sooner would I embrace monarchy at once, in any form, than democracy of that family, which is sure after years of crime and blood and horror, to engender military despotism.

We are urged to abolish the freehold qualification of Suffrage, in order (as we are gravely told) to subvert the lowland oligarchy—the lowland aristocracy—the aristocracy of wealth! And of the existence of this aristocracy of wealth, there stands Col. William Allen of Surry, the living example and proof! Truly, Sir, but for him, I apprehend gentlemen would have been somewhat at a loss to find an instance to their purpose. That gentleman inherited a large estate from his ancestors, and instead of squandering it away, he has kept it together, and improved his fortune; which, in my opinion, is proof of good sense and virtue too. He owns some thousands of acres of land, and certainly a large number of slaves—eight hundred, I think we were told at the commencement of our session, but now (wonderful increase) twelve

* See these statements appended to the Journal of the Convention, Nos. 6, 7.

hundred—and he has a park stocked with deer—and he undoubtedly drinks, or rather gives his guests to drink, the oldest and best wine in Virginia. Long may he live, say I, to enjoy it all! Because there are a few, a very few, wealthy individuals among us, it seems to be supposed, that the great body of our freeholders are opulent. Gentlemen take no note of Col. Allen's poor neighbors. The wealthy freeholders! Would to heaven, they were wealthy! I am sorry to know, with perfect certainty, that the reverse is the true state of their condition; it is mockery to taunt them with their overgrown wealth. The statute of descents is alone sufficient to prevent the possible growth of aristocracy. This talk of the lowland aristocracy—the landed aristocracy—the aristocracy of wealth—is downright slang.

Gentlemen have advanced one argument against the freehold qualification, which, from the frequency with which they have recurred to it, and the earnestness with which they have pressed it upon us, I suppose they think irrefragable—a sort of *argumentum ad hominem*, or *reductio ad absurdum*, which they seem to think it impossible to escape from or resist—an argument, therefore, which it is my business to state and meet fairly and directly. Indeed, to some it might seem uncourteous, and to others sheer recreancy, if I were to decline it. The argument is this—Gentlemen say to us, if you contend, that, in framing a Republican Constitution of Government for the State, a freehold landed qualification of Suffrage is wise and proper, in order to preserve a due regard to the interests of property in the ordinary administration of public affairs, why do you not carry the principle out to all its consequences and to its utmost extent, and allowing one vote to the man that owns ten acres of land (for instance,) allow ten votes to the owner of a hundred, and fifty to the owner of five hundred acres, and so on? Will you pretend, that this would be right? or that it would be compatible with the true principles of a Representative Republic? I answer, without hesitation, no. But, in the first place, the argument, if of force to condemn the freehold qualification, concludes against a property qualification of Suffrage of any kind; and is inconsistent with the views of every man, who is not for Universal Suffrage in the utmost latitude ever heard of. In the next place, I by no means allow, with respect to any moral or political principle whatever, that because it would end in vice or folly if pushed to extremes, it is therefore vitious and unwise, when applied with moderation and caution; for I doubt, whether there is a single moral or political truth, however generally admitted and acted upon by men, that might not be condemned by the same process of reasoning. Then, Sir, we have never contended, that an *undue* influence in the Government should be allowed to property, but that *due* regard and consideration should be had to the interests of property, and only so much weight allowed to it in the Constitution of the Government, as will suffice for its preservation and security; and the fair state of the question is, whether, in insisting on the freehold qualification, we ask more than political prudence dictates? Now, Sir, the owner of a thousand, or ten thousand acres of land, may safely trust the owner of a hundred acres, or of ten, with an equal share of power over property, and especially over taxation; in other words, with an equal vote at the polls, because the owner of the smaller property, has a common interest with the owner of the larger; he must feel precisely the same kind of interest in every public measure, which affects the owners of real estate, either beneficially or injuriously; and as the modicum of the poorer freeholder, and the broader lands of his more opulent neighbour, are equally dear to the respective proprietors, each will unite with the other to promote or defend the interest of all. If the poor freeholder contributes less, his means of contribution are less; the burden is proportioned to the ability; and the more opulent freeholder finds ample security in the self-love of the poorer, and the poorer in that of the more opulent. All we desire is, to place the political power of the State, in the hands of those who have a community of interest in whatever befalls the State, whether of weal or woe.

Comparisons have been made between the condition of Virginia, who has so long and so pertinaciously adhered to her freehold qualification of Suffrage, and that of our sister States, who have adopted more liberal principles, in this particular; and, in painting the portrait of Virginia, gentlemen seem to have thought that nothing but shade is necessary to a likeness, and in the portraits of our sister States, nothing but light. Where, they ask, are our arts, our literature, our manufactures, our commerce? What is the state of our agriculture? What has become of our political rank and eminence in the Union? Whither, in the language of Henry, whither has the Genius of Virginia fled? As to arts (if gentlemen mean the fine arts) and literature, I grant we have a very moderate share indeed of the one, and none of the other—but, whether owing to my ignorance, or to my national vanity, or national prejudices, I have never been sensible of any great superiority of our fellow-citizens of other States in these respects, while I am very sensible of the very great inferiority of us all to the nations of Europe, though none of them enjoy, and not one (I believe) is capable of enjoying, the blessing of Republican Government in any form. Gentlemen will hardly, upon reflection, impute our defects in arts and in letters, to the freehold qualification of

Suffrage. And how any man can impute the low state of our manufactures, and the decay of our trade, to any measures or to any neglect of the State Government, I am wholly at a loss to imagine; since the interests of commerce belong exclusively to the Federal Government; and it has assumed the care of manufactures also—but I do not mean to discuss the justice or the policy of that system of measures. But that which seems to me, the oddest of all the oddities and novelties which I have heard advanced on this floor, is the opinion, that the languishing condition of our agriculture, is owing to the neglect of that great interest by the State Government, and that neglect imputable to the circumstance of all political power being vested in the allodial cultivators of the soil. For my own part, I only wish the Federal Government would unite with the State Government, in leaving manufactures and commerce and agriculture to their natural course—but this no wise concerns our present question; and, I say again, I shall not enter into that field. But, say gentlemen, Virginia has declined, and is declining—she was once the first State in the Union—now she has sunk to be the third, and will soon sink lower in the scale—New York has taken the lead of her. I envy not the pre-eminence of New York, or of any other State, in population or in wealth. Do gentlemen really believe, that it is owing to any diversity in the principles of the State Governments of the two States, that New York has advanced to be the first State in the Union, and that Virginia, from being the first, is now the third, in wealth and population? Virginia ceded away her Kentucky, to form a new State; and New York has retained her Genessee—there lies the whole secret. The conduct of both States was determined by a just regard to the geographical situation of their original territory; and I am well content, that Virginia did make the cession, and that New York retained her territory. The truth is, that so long as new and fertile lands remain to be settled in the Western States, the old States never can advance in population, as rapidly as they otherwise would; and of all the old States, none has contributed more to the peopling of the new States, than Virginia—I dare to say, not one so much. This is the reason of what gentlemen call the decline of Virginia. Her Government could not by any conceivable means have prevented it; nor if it could, ought it to have done so. Virginia, in common with most of the old States, must of necessity forego, for a long time to come, the advantages of a full population; and may, meanwhile, content herself with an exemption from the evils incident to a State of a crowded population. Is Virginia inferior to any of her sister States, in social peace and happiness, in intelligence, in the virtues of private life, in political purity, in national character? No, Sir—I say, proudly and confidently, no. I shall not vaunt of her superiority—but I acknowledge no inferiority. I have been happy to observe, that if she has, at times, been an object of some jealousy in other States, she has still always enjoyed the respect of them all. And I shall add (what is peculiarly pertinent to the present debate) that she has been chiefly respected for the even tenor of her system, and the steadiness and probity of her character and her course; which the most sagacious Statesmen of other States—I say it with the most perfect conviction, or rather the most certain knowledge—have attributed, mainly, to this very principle of the freehold qualification of Suffrage, which it is now proposed to abolish.

And, Sir, the only point of comparison between the condition of Virginia and that of any of our sister States, which is at all pertinent to the present question, is the comparison of the practical effects of Universal or General Suffrage in those States in which it has been adopted, with those of the freehold qualification of Suffrage in Virginia: a point on which it would not become me to speak my thoughts with perfect freedom. I take a deep interest in whatever concerns the happiness of our sister States—not so deep, indeed, as that I feel for my own State, to which I owe and cherish the most perfect allegiance of mind and heart—but yet a deep and sincere interest. I am the last man to take pleasure in finding fault with their institutions, much less with the political character or conduct of their citizens; to think hardly concerning them, or to speak unkindly. I hope it will not be thought inconsistent with these sentiments, if I say, as I must say to this Committee, that I have never conversed with any observant reflecting man, who has migrated from Virginia to a land where Universal or General Suffrage prevails, who has not earnestly deprecated the abandonment of the freehold qualification in this his native State; and that I have never known any Virginian, that had witnessed an election campaign, or even a single scene of contested election, in New York, Pennsylvania, Maryland or Kentucky, however he may have been smitten with a passion for reform in this particular before he left home, who did not return completely cured of it. Neither does the passion ever recur. [Here a member said aloud—"It is like the small pox."] Yes, Sir—it is like the small pox in that respect—but there is this difference, that distance seems necessary to the communication of the Universal Suffrage fever—a near exposure to it, in its utmost intensity, generally proves a cure and an antidote. A close observation of the practical workings of the principle of Universal Suffrage, has rarely if ever failed to produce disgust, reprobation, deprecation. Shall we learn wisdom from the great State of New York, and profit by her experience and exam-

ple? Her example, Sir, is a beacon to warn, not a guide to direct. I will not say—for I do not think—that the scenes which but yesterday were exhibited in the elections held in the city of New York—the open attack on the very principle of property, and on the principles of all regular Government, which excited serious alarm there—that these scenes afford any fair criterion of the sentiments of the body of the people of the State of New York. But, Sir, they afford abundant evidence, to my mind, that the poison has begun to work; and they afford us a lesson and a warning, by which we shall profit if we are wise, never to administer a drop of that same poison to our own body politic. As to our sister Maryland, the practical operation of her Universal Suffrage, is more open to our observation, from her nearer neighbourhood; and I shall say, that it was the actual view of it there, that first cured me of that plausible and tempting but deluding philosophy (so called) which most men imbibe in their youth, and which teaches that civil liberty is so good, that there is no necessity for moderation in the enjoyment of it—that no intemperance can disturb its healthful action. I received, very recently, by the mail, a newspaper printed at Cumberland in that State, with a note on the margin, calling my attention to an advertisement of nine hundred and forty acres of land, for sale by a constable, to satisfy a judgment rendered by a single justice of the peace; and with this remark—“See the effect of Universal Suffrage.” Neither do I doubt, in the least, that the principle tends, in its practical operation, to indifference and unconcern for the rights of property, and especially of real property. How can it be otherwise, when those who hold no property, have a full share of the Government on which the security of property depends? In many, perhaps, in most of the States, where the principle of Universal, or General, or Extended, or Free Suffrage (call it by which name you please) prevails, I observe, the ballot has been substituted for the old method of voting *viva voce*, on the avowed principle, that it is necessary to enable the voter to give his vote with independence, that he should be allowed to vote secretly. Now, the introduction of the ballot, as part of the system and proper accompaniment of Universal Suffrage, is a plain distinct acknowledgement, that the Right of Suffrage is extended too far—extended to men who cannot be expected to give an independent vote, openly, in the face of day—to men liable to the influence of others, and desirous to conciliate their favour, or to avoid their resentment. And this method of preserving the spirit of political independence, by substituting the ballot for the public poll and *viva voce* vote, I fully expected to hear proposed to us, as part of our plan of reform. It is a very odd expedient for cherishing the political independence of the citizen, to take away all occasion for the exercise of it; as if political independence were not a virtue of the mind, and, like all other virtues and faculties, sure to be invigorated by exercise, and to wane and be extinguished by inaction. One remark more, before I leave this topic—I pray gentlemen to observe, how generally the introduction of Universal Suffrage has been followed by the caucus system of nomination—I know the name of caucus has recently been discarded, and that caucuses, now a days, are conventions, but the only difference is the name—caucuses or conventions to make a regular nomination of candidates, to discipline parties, to whip in all who hope a share of the loaves and fishes in their turn, and to whip out all who show a disposition to rebel against “regular nomination.” They cheat the people with the shew of popular election; the elective body, in fact, is the caucus. Where there is a people capable of being drilled, there will not be wanting leaders to drill them. The freeholders of Virginia require no caucus or convention, to direct them how they are to vote—they require no drilling, and would submit to none—they want no ballot-box to hide their votes from their neighbours, and to screen them from the indignation of others—they feel their independence, and it costs them no effort to exercise it on all occasions.

Gentlemen tell me, however, that men who have once enjoyed the blessing of Universal Suffrage, can never be induced to forego it—that the farmers of Pennsylvania and Maryland, are not to be tempted by the offer of the most beneficial leases, to migrate hither; and our landholders can get no tenants, because the requisition of the freehold qualification debars such tenants from the invaluable privilege of Suffrage. If this is meant as an argumentative deduction from the supposed operation of political causes, I have nothing to say to it: but if intended as the assertion of a matter of fact, I must say, that I am incredulous. Let gentlemen name a single instance, in which any man has been prevented from migrating to Virginia, by any consideration of the laws regulating Suffrage. I should be curious to see such a man—for sure I am that I should see the most thorough bred philosopher of modern times, or at least a sample of the utmost extreme of political fanaticism. The true reason, I apprehend, why the farmers of Pennsylvania and Maryland, do not turn their attention to the beneficial leases which court them in Virginia, is, that if they find it prudent to migrate at all, they know very well whither to go, to procure land, and the best land, upon the easiest terms, in absolute property, which they may enjoy during life, and leave to their children. If the good people who dwell on our northern border, hope advantage of this kind from the proposed reform, I fear that hope will be disappointed.

It is remarkable—I mention it for the curiosity of the fact—that, if any evil, physical or moral, arise in any of the States south of us, it never takes a northerly direction, or taints the southern breeze; whereas if any plague originate in the North, it is sure to spread to the South and to invade us sooner or later: the influenza—the small-pox—the varioloid—the Hessian fly—the Circuit Court system—Universal Suffrage—all come from the North—and they always cross above the falls of the great rivers: below, it seems, the broad expanse of waters interposing, effectually arrests their progress.

I thought before the Convention met, that I was already familiar with the utmost extravagance of theoretical politics; but I have heard one proposition advanced on this floor, which is absolutely new to me—namely, that none but those who are allowed the exercise of the Right of Suffrage, are citizens—that all who are denied that right, are, in every just political view, slaves. Whence I learn, that our mothers, wives and daughters are not and never can be citizens; and that our sons never become citizens till they attain the age of twenty-one years, and acquire the legal qualification of Suffrage, whatever it may be. For my own part, I fondly imagine, that the mother who bore me was a free woman and a Virginian citizen—that my wife, and my children—male and female, are free born citizens of Virginia—and that I myself enjoyed exactly the same civil liberty before I attained to full age as I have ever done since—in short, that civil liberty, much more citizenship, depends not at all on the right to exercise political powers. Neither shall I render any thanks, (for I feel no gratitude) to those who have taken the pains to correct my errors in these points. It is, indeed, a great blessing—it is the first and the highest of social blessings—to live under a regular, free, Representative Republican Government; to belong to a society, fitted to enjoy, capable of enjoying, such a Government; but neither the blessing itself, nor any happiness which it can confer upon any individual, depends on the right of that individual to exercise, in his own person, the Right of Suffrage. The blessing of free Government, and all the happiness that can flow from it, is best secured to each individual, by the wisest general regulation of that right, whether such regulation admits him or excludes him. And in this view of the subject, gentlemen will see, upon a little reflection, the general opinions and feelings of men concur with perfect unanimity: for no one ever heard of any vendor of land demanding any consideration for the surrender of his Right of Suffrage in making the alienation, or of any purchasers advancing a cent more in the price for the acquisition of the right; and though I have known many to buy freeholds, in order to entitle themselves to receive the votes of others, I have never known any man to buy land, merely for the sake of acquiring a right to vote, however trivial the cost would be.

It has been said, that the people, that the great body of the freeholders themselves, are not only willing but desirous to abolish the freehold qualification—that the desire to reform the Constitution in this respect, was the ruling motive which led to the calling of this Convention. Willing the freeholders may be, and I believe are, to extend the Right of Suffrage, as I propose to extend it, to all who come within the reason of the principle of freehold qualification—but, that they are willing to abolish the principle itself, I never can believe. The vote in favour of calling a Convention, given by the freeholders in this cismontane part of the State, I am sure was dictated by no such motive. I do know that many, very many of them, were cheated into a belief that the freehold qualification was in no danger; and I heard a member of the Legislature, and as sagacious a man as any in Virginia, declare, that he gave his vote for a Convention, in the firm belief that it would put an end to all disputes about the Right of Suffrage, and confirm and establish the freehold qualification forever. He was sincere, but he was deluded.

I little expected, Sir, after what passed in this Committee, in the debate upon the question of the basis of Representation, to see the attempt renewed, in this place, to discredit the Convention of 1776, and the Constitution it framed for the State, by reference to the untoward circumstances in which it was placed—but we have been again told, that that illustrious body was in a state of too much hurry and alarm to execute with due deliberation a work so important; that the enemy was at their door; and the roar of hostile cannon resounding in their ears; that other and more pressing affairs occupied their attention; and that, therefore, (as gentlemen would have us infer) they were content to leave the qualification of the Right of Suffrage as they found it in the Colonial Government, rather than devote the necessary time to improve it. It has been already shewn, that no part of this representation is justified, in point of fact, by the truth of history; and I shall not repeat what has been better said by other gentlemen. I have always thought, and shall forever think, that the circumstances in which the Convention of 1776 were placed, were the most propitious imaginable to the work that body had to perform; precisely the circumstances best calculated to repress the spirit of faction, and to kindle every spark of patriotism; to stimulate political wisdom to its utmost exertion, to force men to look only to practical

good, to stifle all propensity to the vain speculations of theory, and to enforce on them the observance of the lessons of experience. But I find my sentiments on this subject expressed so exactly, so clearly, and so forcibly, by another and a far wiser man than ever I hope to be, that I shall borrow his language—and I do so the rather, because, very probably, it was the source from which my own sentiments were originally derived. The writer of the 69th number of the *Federalist*—I know not which of the three it was—speaking of a celebrated scheme of Constitution-mending, by which it was proposed, “that whenever any two of the three branches of the Government, shall concur in opinion, each by the voices of two-thirds of their whole number, that a Convention is necessary for altering the Constitution or correcting the breaches of it, a Convention shall be called for the purpose”—says: “It may be considered as an objection inherent in the principle, that as every appeal to the people would carry an implication of some defect in the Government, frequent appeals would in great measure deprive the Government of that veneration which time bestows on every thing, and without which perhaps the wisest and freest Governments would not possess the requisite stability. If it be true, that all Governments rest on opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he supposes to have entertained the same opinion. The reason of man, like man himself, is timid and cautious, when left alone; and acquires firmness and confidence, in proportion to the number with which it is associated. When the examples, which fortify opinion, are *ancient* as well as *numerous*, they are known to have a double effect. In a nation of philosophers, this consideration ought to be disregarded. A reverence for the laws, would be sufficiently inculcated by the voice of an enlightened reason. But a nation of philosophers is as little to be expected, as the philosophical race of Kings wished for by Plato. And in every other nation, the most rational Government will not find it a superfluous advantage to have the prejudices of the community on its side. The danger of disturbing the public tranquillity by interesting too strongly the public passions, is a still more serious objection against a frequent reference of Constitutional questions, to the decision of the whole society. Notwithstanding the success which has attended the revisions of our established forms of Government, and which does so much honour to the virtue and intelligence of the people of America, it must be confessed, that the experiments are of too ticklish a nature to be unnecessarily multiplied. We are to recollect, that all the existing Constitutions were formed in the midst of a danger which repressed the passions most unfriendly to order and concord; of an enthusiastic confidence of the people in their patriotic leaders, which stifled the ordinary diversity of opinions on great national questions; of a universal ardor for new and opposite forms, produced by a universal resentment and indignation against the ancient Government; and whilst no spirit of party, connected with the changes to be made, or the abuses to be reformed, could mingle its leaven in the operation. The future situations in which we must expect to be usually placed, do not present any equivalent security against the danger which is apprehended.” Now, I pray gentlemen to hear-ken to these words of wisdom, and to weigh them well. As to that veneration for ancient institutions, which has hitherto constituted the great moral force of our Government, and sufficed alone to execute the laws; all that is gone—forever gone—extinguished by the agitation which produced this Convention. Our children will hardly comprehend the sentiment. Then, let gentlemen, if they can bear to do so, institute a comparison between the Convention of 1776 and this body. That Convention, after full and free debate, adopted the Constitution it framed, by an unanimous vote. This Convention is torn by dissensions, and divided by parties marked by geographical lines—incited by mutual opposition to the extremes of political animosity—engaged (in the opinion of one party at least) in a mere contest for power; such a contest, as in any other country on earth, and, but for a sense of the controlling influence of the General Government, in this country too, would and could only be decided by the sword. No good that we can now accomplish, can ever compensate for the mischief which this contest has already engendered, and entailed upon the State.

I am not casting censure on others—I take to myself my full share of blame for the heats, which the collision of interests and opinions have produced in this assembly—my heart rises above all petty personal resentments and party views, and feels only for the woes of my country. Though I shall continue to resist to the uttermost of my power, all unreasonable demands from the West, I do not feel—whatever others may think of me—I do not, I cannot feel (heaven forbid that I should!) any hostility to my fellow-citizens of that part of the country, any disregard of their just rights, any indifference for their happiness. Gentlemen who have any knowledge of me, must know, that these sentiments are not uttered for the occasion, to serve a purpose here. In the paper I addressed to my countrymen in 1824 (commonly called *The Substitute*) after having exhibited the state of the existing representation in the Legislature, and shewed that the representation of the Western counties, compared even with that of the Eastern counties, was excessive, I said: “The *Western* counties have at present

about *one-fourth* of the representation in the House of Delegates. Comparing the population of these counties (about one hundred and forty-five thousand five hundred) with that of the Commonwealth (about one million and fifty thousand) it is plain, that no plan can be devised for equalizing the Representation, which will not reduce their proportion to something less than a *seventh*. He who thinks, that the people of those counties ought to consent to such a diminution of their weight in the Legislature, has no fellow-feeling for them: he who thinks that they ever *will*, counts the heart of man for nothing, in his political speculations. The schemes of equalization, which would work such consequences, could only be imposed on them by force. There is, indeed, one principle, on which the *Western* people might consent to such equalization; one, on which they would lose none of their relative strength in the Legislature. If, in apportioning the Representation, the *slave* population, so inconsiderable in the *Western* counties, so large in the *Middle* and *Eastern*, shall be wholly disregarded, the *Western* counties will perhaps as eagerly embrace, as the *Middle* and *Eastern* will strenuously resist, this blessing of equality. And let the attempt be made when it will, this question, (which seems to be the very dæmon of discord,) will be sure to rise up to confound our peace. In the apprehension of this meeting, the very agitation of this subject is calculated to do great mischief. It is a searching blast, which will find every weak part of the body politic. And we implore those, who are prosecuting this design, to beware, lest, while they mean only an equitable arrangement of the Representation, they be not striking a fatal blow at the integrity of the Commonwealth. For, we feel the most painful conviction, that the actual attempt to execute the design, will array in direct opposition, all the conflicting interests of the State, growing out of natural diversities in the face of the country, and out of the moral diversities of our population; and wake into action, all the latent causes of civil contention, which good men should wish, and wise men should labour, by all means, to allay." The same sentiments I entertained then, I entertain still. Did my fears magnify the danger? The evil has now come upon us in a form more aggravated—the storm is raging with greater violence—than even my anxious mind foreboded.

But, upon this question of the qualification of Suffrage, I do not discern any reason for difference of opinion among us, growing out of diversity of local interests. And I implore gentlemen to pause in their adventurous career of experimental reform; to preserve every part of our ancient institutions, which they cannot alter with any certain assurance of amendment; and, especially, to leave us unimpaired the essential principle of the freehold qualification. If the State shall make a false step here—particularly, here—that step she can never hope to retrace, any more than we can recal the hour which has passed away and brought us so much nearer to the grave.

After Mr. Leigh had concluded his speech, a short explanation took place between himself and Mr. Doddridge, on a point of law involved in the amendment; when Mr. D. moved that the Committee rise.

It rose accordingly, and thereupon the House adjourned.

SATURDAY, NOVEMBER 21, 1820.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Courtney of the Methodist Church.

The Convention having again resolved itself into a Committee of the Whole, Mr. Powell in the Chair, and the question being on the amendment offered by Mr. Leigh of Chesterfield to the third resolution reported by the Legislative Committee:

Mr. Doddridge, (who, having moved for the rising of the Committee yesterday, was, by Parliamentary usage, entitled to the floor,) signified his intention of yielding that privilege to the member from Amherst, (Mr. Thompson;) but previously gave notice, that should the amendment now before the Committee (Mr. Leigh's) be rejected, he should offer the following amendment to the third resolution—viz:

Third resolution, second and third lines—from the word "resolution," strike out to the word "provided," in the twenty-third line, and insert:

"And shall be extended to every free white male citizen, aged twenty-one years or upwards, who shall have resided at least one whole year in the county, city, borough or district, in which he shall offer to vote, immediately preceding the time of voting; and who, during that period, shall have actually paid a revenue tax legally assessed—And to every free white male citizen, aged twenty-one years or upwards, who shall have actually resided at least one whole year in the county, city, borough or district, where he offers to vote; and who, for the period of six months at least, shall have been an house-keeper therein."

MR. THOMPSON of Amherst, addressed the Committee as follows :

MR. CHAIRMAN: The gentleman from Brooke, who by Parliamentary usage, was entitled to the floor this morning, having for the present waved his right, I rise to solicit for a short time the attention of the Committee, whilst I endeavour, in my poor manner, to discharge an obligation of duty, which I owe to the constituents in part represented by me in this Convention. It is, as you well know from personal experience, Mr. Chairman, a painful and embarrassing duty. I would to God it had been committed to other and abler hands. When I consider the time, place, and circumstances that surround me, the momentous interests involved in our deliberations, and the weighty responsibility that rests on each and every one of us, in connection with the humility of my own pretensions, I almost shrink from the task that lies before me: but on the other hand, when I call to mind that I am the representative in part of many thousand free-men, who spontaneously, and without any solicitation of mine, have clothed me with this high, delicate and responsible trust, all personal considerations vanish, and I resolve fearlessly to speak their sentiments on this floor, regardless of all the sarcasm, wit, ridicule and even derision, with which principles they hold dear and sacred, have been assailed in the progress of the debates of this Convention. Had not imperious duty, in my humble estimation, forbidden silence, my lips had been sealed, hermetically sealed, during the session of this august Assembly. But I should forever despise myself, if whilst I am the representative of freemen, I could sit by in silence and hear the sacred and unalienable rights of man derided, and should tamely shrink from their defence, under the influence of any unmanly fear of criticism, or of any personal consequences whatever.

I feel that I shall need much of the polite attention and kind indulgence of this Committee to sustain me in the task I have imposed on myself; and the wonted magnanimity and courtesy of a Virginia Assembly, I am sure, will always accord it to a member of its body, so long as that member shall merit it, by courtesy and decorum on his part. Like an honorable gentleman, who addressed you on a former day, of this Convention, I too may disclaim any intention of entering the lists to break a lance, with the redoubtable knights who have contended for victory on this arena. I have neither the prowess to impel, the strength to sustain, nor the panoply to protect me in so unequal a conflict. In common with this Committee, I have participated in the delight of listening to the luminous and eloquent arguments of gentlemen who have addressed you on this and other questions. And after so long rioting on the rich banquet they have spread before us, I but the more regret that I have nothing but the homeliest fare to offer in return. I lament my inability to reciprocate light for light—I have the consolation, however, to know that the same spirit which prompted to the offering of the widow's mite, has dictated this poor attempt of mine; and I therefore trust, that my offering, however humble, will meet a similar fate, from the benignity of this Committee. Mr. Chairman, I somewhat regret that in the order of debate, it is my lot to follow the talented and eloquent gentleman from Chesterfield. I have not the vanity to suppose, under the most auspicious circumstances, that I could interest this enlightened Committee by any view I could present of a subject, much less when preceded in the debate by that gentleman. Believe me, Sir, I have not the vanity to contest with him the palm of victory in the fields of rhetoric, of erudition, or of wit. No, Sir. As to them, so far as I am concerned, I leave him the undisputed victor of the field. I do mean, however, in the course of my remarks, to question many of his facts, or rather assumptions, and the conclusions he has adduced from the facts assumed.

MR. CHAIRMAN, I scruple not *in limine* to avow that I am one of those *visionary* politicians who advocate General Suffrage, what gentlemen are pleased to term *Universal Suffrage*. And, in this avowal, I believe I speak the sentiments of a large majority of my constituents. What I mean by General Suffrage, is the extension of that inestimable right of voting in the election of all public functionaries, made eligible by the people to all white freemen of the age of twenty-one years and upwards, who are citizens by birth or residence for a certain time, and who have discharged all the burthens personal, including militia duties, and pecuniary, such as taxes, imposed upon them by the laws of the land, and excluding such as are rendered infamous by the commission of crime. In other words, I wish to establish a qualification that is personal, and respects age and residence, and to abolish forever the freehold qualification, which to me has always appeared an invidious and anti-republican test. Like the gentleman from Charlotte, (Mr. Randolph,) I did not come here to vote for the disfranchisement of one human being qualified to vote under the old Constitution, but to aid in the enfranchisement of all who come within the foregoing description. I came here to contribute my feeble aid in the great cause of *non-freehold* emancipation, but not to imitate an example set us elsewhere, of disfranchising the forty shilling freeholders. I am, therefore, diametrically opposed to the amendment proposed by the gentleman from Chesterfield, as I am to all amendments that go to restrict the Right of Suffrage; and upon this question, I will meet and take issue with the friends

of freehold qualification, amongst the most strenuous of whom, the gentleman from Chesterfield, has proved himself, by the argument which he yesterday addressed to this Committee. I am willing to rest this argument upon the authority of reason and common sense, the Bill of Rights, upon the doctrine of expediency, or upon experience, which, *visionary as I am*, I consider more valuable than volumes of speculation and theory. It is with me perfectly indifferent, whether this right be regarded as a natural, a social, a civil, or a political one; the conclusion at which I arrive, satisfactorily at least to myself, is the same.

Before I proceed with my argument, I must trouble the Committee with a few general observations suggested by the course of this debate. I cannot forbear to express my surprise and regret at some of the principles avowed by gentlemen on this floor, and the change which public sentiment seems to have undergone in this ancient Commonwealth. In the opinion of some gentlemen, Government has no principles. The idea of patriotism and virtue even are exploded, and self-love and self-interest are the only springs of human action. The rights of men are a mere chimera of distempered imaginations, and in this debate have been made the theme of ridicule and derision, rather than eulogy. Against this, I solemnly protest. There was a time when this would not have been endured, when such language would have been offensive to republican ears. In the whole progress of this debate, the name of Thomas Jefferson, the great Apostle of liberty, has never once been invoked, nor has one appeal been made to the author of the Rights of Man, whose immortal work, in the darkest days of our revolution, served as a political decalogue and operated as a talisman to lead our armies to victory. There was a time when it was honorable to profess the faith of these great fathers of the church, when it was perilous to be a sceptic, when the name of Fox was venerated, and the principles of Burke abhorred—but the sentiment of the Latin poet quoted in this debate are but too true, "*tempora mutantur*," &c. rendered into English,

"Men change with manners, manners change with climes,
"Tenets with books and principles with times."

Then, the authority of the sage of Monticello would have stood against the world; now, there are "none so poor as to do him reverence." Then, was Burke regarded as the enemy of human rights and the firmest defender of aristocracy and monarchy—but now, Burke, Filmer, and Hobbes, judging from their arguments, have become the text books of our statesmen.

Mr. Chairman, I have spoken of political faith and political church—it recalls to my mind an observation I have often made, and no doubt has often occurred to the mind of every member of this Committee—and that is the great similarity in the conduct of the votaries of religion and politics. In these days, you find no atheist and few professed deists, but how many practical ones? men who, whilst they yield a sort of historical belief or assent to divine truths, live in the open and daily disregard of them, and utterly refuse all practical obedience. They cannot impose upon themselves that forbearance, self-denial, and humility enjoined by the author of that religion—their pride and their manhood revolt at that text, which informs them that they must emulate the simplicity of infant innocence ere they can enter the kingdom of Heaven. So, Mr. Chairman, with a large class of our politicians, who, whilst they have not the bold daring to deny the great principles of our political faith, whilst they profess to keep that faith, they refuse all practical obedience. They say the theory is very good—but the pride of intellect and of wealth, that inherent love of distinction in man, that overwhelming self-love, and that pharasaical spirit which induces frail man to plume himself on his own supposed perfections, and to congratulate himself on the infirmities of his fellow-man—revolt at that political equality taught us by the precepts and practice of our forefathers. I like not their theoretical republicanism. I care not for professions unless the precept and the practice correspond—as I will judge the tree by its fruit, as I will judge the christian by his works, so I will judge the professor of republicanism by his practice.

Let us now, Mr. Chairman, return to the subject immediately under consideration—the Right of Suffrage—I shall bestow but little time upon the consideration of the question, whether it is a natural, social, civil, or political right—for the inquiry is rather curious than useful. What boots it, if it be a valuable right, whether it be the one or the other? Nor shall I, like other gentlemen have done, resort to any laborious inquiry into the question, whether a state of nature ever in fact existed? I leave this task where those gentlemen have left it, who have endeavoured by most metaphysical arguments to prove it a creature of abstraction. This, however, I will say, that whether it ever did or could exist or not, it is as fair and necessary to suppose its existence, and to assume it as a postulate on which to bottom a political deduction, as for the mathematician to suppose the existence of a straight line on a point, as a postulate on which to found his demonstrations; nor are maxims in politics less useful in prac-

tical results to the statesman, than are the axiomata and postulata to the practical geometriician.

What, then, is the Right of Suffrage? Not what gentlemen seem to understand it, in its technical and confined sense, the right to vote for public functionaries only, in a regular organized Government: in its enlarged sense, it is the right by which man first signifies his will to become a member of Government of the social compact—the means by which that same man gives expression to his will in the formation of that compact, his consent to, or his veto upon, measures of the Government in legislation in a pure democracy, as at Athens, and in others of the ancient republics, and some of the modern, or the right of voting for public functionaries as above mentioned, in a Representative Democracy such as ours, where the people do by their agents what they could not conveniently or even possibly do in person. This being its definition then, is it a natural right? I understand natural rights to mean such as appertain to man in a state of nature; this appertained to him in a state of nature, for it was by its exercise in that state that he agreed to relinquish the natural state and enter into society—But, say the gentlemen, such a state never existed—the consequence is that man has no natural rights, if my definition of natural rights be correct—but the gentlemen admit he has natural rights, life, liberty, the pursuit of happiness, and the means of acquiring and enjoying property. Suffrage is the substratum, the paramount right upon which all these rest for protection, preservation, and safety. This right, as has been very properly said, has its origin in every human being, when he arrives at the age of discretion: it is inherent, and appertains to him in right of his existence; his person is the title deed, unless it be those on whom the same natural law has pronounced judgment of disability, or those who have forfeited it by crime or profligacy; and one other class in this country who must be the victims of necessity, that can never be urged as an example for disfranchising the white man. It is said not to be a natural right, because we curtail, restrict, and confine it, as before said; that it is forfeitable, and that our exceptions include more than our rule. Life, liberty, &c. are curtailed, restricted, and forfeitable, and subjected to exceptions, yet they are admitted to be natural rights. Natural rights may be transplanted into the social, civil, and political state, yet they are still natural rights. A distinguished statesman has informed us that most of our civil rights have natural rights to rest upon—nor do I think I should be far wrong, were I to assert that all our important rights, whether civil, social, or political, are, properly speaking, natural rights. The exceptions, we all admit to the universality of the right, by which the gentlemen endeavour to overthrow the rule itself, I shall notice a little farther on. But suppose it be not a natural right, it must be one of the other three, and I care not which—why should a majority of freeholders have it in exclusion of a minority of non-freeholders? If the non-freeholders were consulted, and upon the score of expediency voluntarily made the surrender, there would be no cause of complaint on their part—but it is claimed of them as a right. Have they ever been consulted? No. Do you purpose to consult them? No. Then it comes to this, that a minority of one class have taken possession to the exclusion of a majority, not by the consent of that majority, but by consent among themselves, or by accident, or by *jure divino* I suppose, and now claim to hold the possession against the right. Have not the majority as much right to exclude the minority as the minority the majority? Yea, more. But we claim for the poor no right to exclude the rich, for the many no right to exclude the few; we claim only equality (which is equity,) for all, and deny the right of any arbitrarily to exclude the rest. These claims and these denials, I stated in the beginning, to be founded upon reason and common sense, upon our declaration of rights, which is a plain and simple deduction of principles from that paramount source, *right reason*, upon experience, and expediency, the gentlemen's own grounds.

By the way, I would ask if it be a question of expediency, why is the non-freeholder not permitted to pass upon the question by his vote? Why will you deny to him an opportunity of making a merit of necessity, if he must be disfranchised? Why is it, that Virginia has presented the first instance of a Convention called to form a Constitution without consulting the non-freeholder, any more than your free negroes, and without allowing him any voice in the election of delegates that compose that Convention? And why is it, that you purpose to carry the injustice still farther by submitting this Constitution to the ratification of freeholders only? If expediency be the plea, and it be true, and has been true for more than half a century, why should gentlemen now labor so hard to prove it? Are these arguments to convince the freeholders they ought to hold on, or to reconcile the proscribed to their fate? The object, Sir, is to induce the freeholder to hold on, not to convince or to reconcile the non-freeholder; for believe me, Sir, that were impossible; you cannot convince a freeman in this country that his neighbour has more political rights than himself, and that it is expedient for him to be guilty of committing the suicidal folly of surrendering up all or any of his rights into the hands and keeping of others—You will find many men willing to admit, that their neighbours are incapable of exercising the rights of sove-

reignty, but none that will ascribe that incapacity to themselves—and I congratulate the country upon the march of liberal principles, that the freeholders themselves are prepared to surrender these pretensions. This is a freehold Convention, and I believe that a large majority of the constituent body have decided upon the abolition of the freehold test—unless the worthy gentlemen who have undertaken to rejudge their justice—should succeed in their attempt to induce them to retrace their steps, which God forbid! Mr. Chairman, I said the proposition affirming the right of General Suffrage could be sustained upon the principles of reason and common sense. Is it not so? Does it not command the assent of every unprejudiced and unsophisticated mind as almost a self-evident truth? Is it not the affirmation of a principle written by the pen of nature upon the heart of every human being, whose spirit is not bowed down by oppression and political degradation? Who doubts the proposition when it is announced? Not the great body of the people, in whom of right the sovereignty resides, whose polar star is right, and not expediency. None but those statesmen who make human rights any thing or nothing to suit their varying ideas of expediency, which has been, in all ages, the pretext for every atrocity, the tyrant's plea, and the Jesuit's watchword. But why need I detain the Committee in discussing principles derived from reason and common sense, which, more than half a century ago, were deduced by our forefathers, and so happily expressed in our Bill of Rights? Here is a text that no commentary can illustrate, written in characters so legible, that he who runs may read, and in terms so simple, so intelligible, and so consonant to the love of equal liberty implanted in our hearts, that it “comes home to the business and bosoms of men.” To this text let us appeal for the evidence of that Right of Suffrage for which I contend; a “right inestimable to freemen, and formidable to tyrants only.” The first article of the Bill of Rights reads thus: “That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty with the means of acquiring, and possessing property, and pursuing and obtaining happiness and safety.” The second declares, “that all *power* is vested in, and consequently derived from, the people: that magistrates are their trustees, and servants, and at all times amenable to them.” The third declares the end and object of Government to be, “the common benefit, protection and security, of the people, nation, or community,” and affirms the right of a majority, “to reform, alter, or abolish it, in such manner, as shall be deemed most conducive to the public weal.” The sixth affirms, that “elections ought to be free, and that all men, having sufficient evidence of permanent, common interest with, and attachment to, the community, have the Right of Suffrage.”

Now, Mr. Chairman, if I were to ask a plain man, who were entitled to vote under these provisions, would he answer land-owners only, or such persons as I have heretofore described, including the great body of the people, a majority at least? He certainly would not answer freeholders; there would be no doubt in his mind, unless indeed, he should chance to take the advice of counsel, who like Doctor Doubty, finds doubts in every thing; then perhaps a doubt would be suggested; but to understand the Bill of Rights, requires not the aid of counsel, or statesman, nor of wise, nor learned men: it is intelligible to the most unintelligent above the grade of *non compos mentis*; and well it is, Mr. Chairman, that it is so. If only the wise and the learned were capable of comprehending the fundamental rights of a free Government, such a Government could never have existed, and if it had, would necessarily have been of short duration. But when we quote the Bill of Rights upon our opponents, they do not flatly deny its force and authority, but explain it away by the Constitution. They say their authors are the same men, and that they have given a contemporaneous and practical exposition in the one, of what they meant by the other, in establishing Freehold Suffrage in the Constitution. A conclusive answer to this has been furnished by the arguments of more than one gentleman, that has preceded me in the debate.

The circumstances in which our forefathers were placed, and under which they acted, would have rendered it very unwise and impolitic to carry out at that time to their full results all the principles established by the Bill of Rights. They had not the time, had it been wise to do so. They acted in haste, and it was then more than problematical what would be the issue of the struggle they had just embarked in. Why should they then create division at home, by disturbing the settled order of things, when harmony was so essential to the success of their great enterprise? They thought it wise to leave the perfection of their work for more auspicious times; this we are told by the immortal Jefferson, and as every one must infer from the instrument itself. Is this not proved by the ordinance of the Convention, passed only three days after the Constitution, by which we adopted for a system of distributive justice the common law of England and the statutes made in aid thereof, up to the fourth year of James the 1st? By this, we had engrafted upon our code the law of primogeniture, of entails and the institutions of the hierarchy. Might not the same reasons

now assigned for adhering to the freehold test, have been urged against our statute of distributions, the statute for docking entails, and the act of religious toleration, the work of the immortal Jefferson? To the same causes, that we assign for the adoption of the freehold Suffrage in part, want of time for reflection and deliberation, must be ascribed another imperfection or inconsistency in the Constitution; a failure to prescribe any qualification whatever for your Governor, your Judges, your Magistrates, your Militia officers, &c. Now, is it not absurd to say, that before a man can vote for his neighbor, to represent him in the Assembly, he must furnish as a test of his independence or patriotism, the possession of his fifty acres? yet no test either of property, residence, or citizenship, is required of your Governor; for aught the Constitution contains, your highest Executive, your highest Judicial, and your highest Military officers may be aliens. This surely proves the imperfect character of the instrument, and the cause of that imperfection, as before assigned; but it proves also another thing; it proves the absurdity and inutility of the freehold test. If you can trust your Governor to execute your laws, and to temper them by the high prerogative of mercy, in the exercise of the pardoning power; if you can trust your lives, liberty, and property to your Judges; the defence of your homes and your fire-sides to Military commanders and militia-men, though they possess not one acre of land, and though they be as poor as Lazarus; in the name of common sense, why is it that you cannot trust a citizen without fifty acres of land to go to the polls, and vote in the election of public functionaries?

Mr. Chairman, it has been said by the gentleman from Chesterfield, and by other gentlemen, that we derive a rule from the law of nature and the Bill of Rights, in relation to Suffrage, that is in its terms universal, and that we ourselves abandon it, and thereby prove its fallacy: the females, including one half of the population, are disfranchised at one fell swoop; minors, convicts, paupers, slaves, &c., which together, compose a large majority of every community: and hence they argue, that as our rule, if carried out to its extreme results, will not work well, it must be erroneous. For this argument, I have a short answer; it will not do to test any rule by extreme cases. I presume it cannot be necessary for me to assign a reason for the exceptions. In this the gentleman and myself would doubtless agree. He has himself very happily assigned the reason for excluding females; and could assign reasons as satisfactory for the other exceptions. In the foregoing exceptions we are all agreed. I do not understand any of those excepted classes, as now complaining, nor that any member of the Committee wishes to include them. Why then lug their claims into this debate? For what purpose do the gentlemen so generously step forward to their relief, who seek no relief, and for whom none is intended by either party? I can tell you, Sir; the gentlemen seek by argument to elevate their rights, in order to disparage ours. I object to this change of issue; the question is now between freeholder and non-freeholder; to which contest these others are no parties. I insist upon a comparison of our titles in this our writ of right, if I may be allowed to borrow a figure from that profession of which I am an humble member. In this form of action, and not as an ejectment, neither party can rely upon the weakness of his adversary's title, provided it be better than his own; it is simply as before stated, a comparison of titles; this I insist to be the law of this case. If the freeholder and non-freeholder have usurped the rights of other classes, it is no reason in the mouth of the freeholder, against an equal division of the spoil. I have always heard that honour was observed among thieves and robbers. I have thought it necessary to say this much, to shew that the exclusion of females, &c. had not legitimately the least connexion with this question. If it be a good argument, carried out to its results, it would justify any man to make a slave of his neighbour, provided that neighbour happened to be the owner of a slave. The argument of the kidnapper would be this, to his enslaved captive; "you, Sir, held a fellow-creature in bondage, because you thought it expedient to do so. I have the same right to enslave you, and I think it expedient to do so. I justify myself by your own example. I try you by your own rule." So with the freeholders, when they are challenged to shew a better title than the non-freeholder, they resort to the plea of expediency; that it is expedient they should have the power, and that as females, &c., are excluded by mutual consent, *ergo*, we the freeholders will exclude the non-freeholders, because they concurred in the exclusion of females, minors, &c. In what does the case just supposed, differ from this? So we find that *their* arguments will not abide the test of being carried to their extreme results. And this is not the only argument of the gentlemen, obnoxious to the same criticism. In the discussion of the question of Representation, they contended for the mixed basis: we replied, that it was inadmissible, that it was anti-republican, to give out political power, in proportion to the wealth of the voter; and that if it was just, to give one district weight in proportion to its wealth, it was equally so to divide power among citizens of the same county in the same ratio, and so it is: but of this argument they complained as being unfair, and founded on extremes, which they said was an unfair mode of treating their proposition. And this reminds me of a discrepancy between the first and last argu-

ment of the gentleman from Chesterfield. In the argument of the question of Representation, we contended that the fears of the East were unfounded; for, that all the country between the Alleghany and the sea-shore, was slave-holding; that it therefore had a common interest, and would always have the power, as it now had; that although the Valley had not as many slaves as the East, yet taking the ratio between the tythables and slave-owners; it appeared that the slave property was more generally diffused there, than in the East; there were more small slave-holders; and that the owner of one slave was as safe a depository of power, as the owner of one thousand; inasmuch as the tax on that one would be as onerous to him, as the tax on the one thousand would be to their owner; and would make him as vigilant to guard and protect that right. This argument, then, from our side of the question was wholly repudiated, and if I remember rightly, by the gentleman from Chesterfield; yet on yesterday he used that very identical argument to prove that Col. Allen's poor neighbour owning but one slave was as safe a political partner for the Colonel, as though he owned one thousand slaves, and assigned the very identical reasons heretofore assigned by the friends of the white basis. But, other discrepancies exist in the arguments which could not have escaped the attention of this Committee. They complain, that by extending Suffrage, you augment the power of the rich; a singular complaint coming from the friends of restricted Suffrage, and most generally, if not always, used by the rich themselves. They say that tenants are not to be trusted, because they will vote for their landlords, or as they direct; the poor will vote for the rich, or as they direct; yet these very same gentlemen claim power in Representation, for the protection of the property of the rich. They disguise the effect of the claim by telling us, they claim it not for individuals, nor counties, but for sections of country; and that the effect of it is, to ascribe power to the poor, in right of their vicinity to wealth, for its protection; in other words, to give them all equal portions of this surplus power reserved on the score of wealth, in trust for the benefit of their rich neighbours. If this be so, why should the gentleman from Chesterfield and his associates, fear the subserviency of the tenant to the landlord, or of the poor to the rich? If they hold power for the benefit of the landlord and the rich, they must either yield to the views of those persons, or set up for themselves; if they set up for themselves and disregard the wishes of the property-holders, they would prove unfaithful trustees, and the object of property Representation would be defeated; if, on the contrary, they should prove subservient, then only could the object of protection be accomplished by the means of property Representation; and the gentleman should, therefore, not complain, of this effect of universal or extended Suffrage. But again: the gentleman, on yesterday, objected to tenants being voters, because, said he, the landlord held them by their very heart-strings; could restrain upon them, sell their last cow, and even the cradle on which their infants reposed. If the gentleman's argument be a good one, I think it will prove too much. I think it will prove that his favourite freehold test, is not quite so good a one as he seems to think, unless there be something in the ownership of land, that by enchantment or magic converts frail erring man, into an infallible and impeccable being. I think all the tests, except those of age and residence, will be found too imperfect to act upon. A moral test no man would advocate, neither a religious; an independence test founded on the possession of property is equally Utopian, equally unjust, and equally fallacious; no man contends that the land is a test of patriotism; and even if it were, should it, therefore, be established as the test of Suffrage? I presume there are as many degrees in patriotism as there are men; and as there are degrees in any other virtue. Every man is more or less a patriot, if patriotism means love of country. A man that loves not his country, is a monster; such a one as I have never yet seen, though such have lived, and live to infamy on the page of history, as Benedict Arnold, and a very few such. The love of country is formed in the heart of man in childhood, in youth, and does not, as seems to be supposed, grow out of the self-love and self-interest of mature years; it springs from the affections and the associations of childhood and youth, before the sordid and selfish cares of manhood have taken possession of the heart. Did the patriotism of Aristides, of Marcellus, and of other great names that might be mentioned, rest upon the freehold; were they less patriots in exile, than the ungrateful men that banished them? I humbly answer no.

Mr. Chairman, will not the reasons assigned by the gentleman from Chesterfield, for the exclusion of tenants, operate in equal degree to exclude his own favorite freeholders? will it not furnish a good reason for excluding every man that is indebted, and for putting the Government in the hands of the creditor class of the community? And if this be the rule of exclusion, how many of the freeholders, think you, will be excluded? I venture to affirm at least one half or three-fourths: is there not that proportion indebted to their neighbours, their merchants, to the Banks, &c., by account, by bond, and by trust deed, or otherwise; and will not a debt have the same influence upon a freeholder, as upon a tenant or other non-freeholders? Indebtedness is, in substance, the reason assigned for excluding the tenant; and can it be a matter of any importance what sort of debt it be, whether it be for rent or any other con-

sideration; whether it be collectable by distress-warrant, or by fieri facias, whether the cow or the cradle be sold by the constable, the sheriff, or a trustee or marshal, or whether the person indebted be turned out of possession by notice, to quit if a tenant, or by a *habere facias possessionem*, or *sesinam* if a mortgaged freeholder? I, therefore, conclude, the gentleman's own rule, tried by his own arguments, would include as much too many voters as it would exclude, improperly, tried by our arguments. The gentleman's argument has evidently on several occasions varied with itself. This has not been the fault of the gentleman's ingenuity or ability, but the fault of the principles he advocates; his premises are wrong; "he has laboured under a cause too light to carry him, and too heavy to be borne by him."

The gentleman from Chesterfield, has said Universal Suffrage originated in Cromwell's army. He has been well answered by the gentleman from Frederick, (Mr. Cooke.) Did the gentleman, when he made this assertion, forget the *pure* democracies of antiquity, where all voted and legislated in *propria persona*; did he forget those of more modern date, but still more ancient than the age of Cromwell? I mean the Swiss Cantons. Their Suffrage was more universal than it ever was before or since: every male of the age of fifteen years was allowed to vote, and I take it upon me to say, that no evil there resulted from this extended Suffrage.

The gentleman from Chesterfield, in his argument in favor of property Representation, warned us against the white basis, equal Representation. He said it would inevitably lead to the subversion of our free Government and to despotism. He cited as examples, Greece, Rome, and all the ancient Republics, and held up to us the English Government as an example in many respects worthy of our imitation. He yesterday predicted that the same effect must necessarily result from Universal Suffrage, but instead of again vouching the ancient republics to sustain him in this prophecy, I think he said these Republics furnished no light for our guidance, but that England was the country we must look to for our analogies and for lessons of instruction and experience, it being the only Representative Government bearing a real similitude to ours, in the world, or that ever existed. Then all free Governments have perished by these formidable foes of liberty: equal Representation, and Universal Suffrage. How do the gentlemen account for the fall of despotisms? they too, have perished, and free Governments established on their ruins. Did Universal Suffrage, and equal Representation, produce these effects too? if so, they have done as much good as evil, and deserve not such utter reprobation. But the truth is, gentlemen have been misled; they knew only the historic fact, that Governments free and despotic have perished, have shared the fate of every thing mortal, have obeyed that great law, which sooner, or later, consigns to the tomb, man, and all the works of man; but the remote and hidden causes, that produced these effects, ever have been, and ever will be, mere matter of speculation. The ancient or the modern Republics, are surely incapable of teaching us any lessons of instruction, or of furnishing any beacons for our warning; they are not cases in point; there is no resemblance between the pure democracies of antiquity, and the Representative democracies of the United States. Here was made the first experiment of that form of Government, and ours are the only Representative democracies that ever existed. Had the Republics of Rome and Greece, been based as ours, upon the Representative principle, their liberties might have been immortal; for, if that attribute can, without impiety, be ascribed to any Government, it must be to a Government like ours. I fondly trust ours will be immortal. For this Representative principle we are indebted to England, and she borrowed it from the woods of Germany; but in borrowing this part of her Government, we discarded her monarchy, and her aristocracy, infusing instead, the pure democratic spirit into our institutions. Greece and Rome have furnished us models of architecture, statuary, poetry, and painting, but not of Government. It would be as just to compare their beautiful temples to our steam-boats, cotton-gins, and printing-presses, as to compare our institutions of Government with theirs; they are as dissimilar. They, therefore, can shed no light on our deliberations, much less, Mr. Chairman, than the Cherokee nation of Indians, who have recently established a free Constitution of Government, and laws. Mr. Chairman, we have heard many professions of patriotism, and love of country. I doubt not their sincerity, but I shall make none myself, after telling you that the man who loves not his country, is a monster in human shape.

Nor shall I, Mr. Chairman, join in the war of epithets, so much complained of by the gentleman from Chesterfield, and the gentleman from Spotsylvania. I submit it to the candour of this Committee to decide, who cast the first stone, and whether if aristocrat and monarchist, be obnoxious epithets; whether visionaries, abstract theorists, demagogues, bidders at the shrine of popularity, slang, &c., be not entitled to the same appellation. I submit it to the candour of the gentleman from Chesterfield, whether in his zeal, he has not been betrayed into the same fault, which he has imputed to our side. For one example among others, that might be enumerated, of intemperate zeal and harsh epithet, we had asserted the claims of the sons of freeholders

to the Right of Suffrage, he replies, that if they are permitted to vote, the consequence will be, that the son will vote with, or differently from his father—if with his father, the man with four sons will have five votes—if they vote differently from the father, these four sons, will be four scoundrels and puppies. Surely the gentleman's reflections cannot sanction now such opinions; if they do, I would ask him at what age may a son, a freeholder, ever vote independently, without meriting the epithet of scoundrel and puppy; and this, Mr. Chairman, is a sentiment expressed by one, who has so strenuously contended for the independence of voters!

I agree with the gentleman from Chesterfield, in the eulogy he has paid to the freeholders of the State: there is not in the world a more respectable body of men. I have cause to respect, and love them—it was their partiality, undeserved I am sure on my part, that sent me here—I am sure they will not consider me as disparaging their claims, when I say, that the non-freeholders are a respectable body of men. There are virtuous and vicious amongst both classes. Indeed, Mr. Chairman, we have been told by a very philosophic poet, and I think truly,

“Virtuous and vicious every man must be,
“Few in the extreme, but all in the degree.”

But I cannot agree with the member from Chesterfield in the *compliment* he has paid to the intelligence of the so much lauded freeholders, by supposing them to have been cheated out of their votes in calling this Convention, or in the elections to this body, or cheated into sentiments so hostile to their true interests. After attributing to them the suicidal folly of calling this Convention, not in terms, but by the tenor of all his arguments, it was indeed the most charitable supposition, as to them, to suppose them to have been misguided. The people in my district, I venture to say, were not cheated; I cannot say how it was in others.

Mr. Chairman, I cannot see what the ballot boxes (or Pandora's, if it better please the gentleman), and the constable's advertisement sent by some anonymous correspondent from Maryland, have to do with the subject of this debate. The gentleman very confidently expresses his preference for the *viva voce* election, reprobrates the mode of voting by ballot, then gratuitously assumes this latter mode to be the necessary consequence of extended Suffrage, and by this assumption he readily justifies his reprobation of the cause of this consequence. I agree with him in preferring the *viva voce* mode of voting, but I am not prepared so confidently, as he seems to be, to pronounce an anathema upon the other. We should, at least, pause and reflect well before we condemn a practice adopted by many of our sister republics, and, so far as I am informed to the contrary, with good effect; a practice, the adoption of which is now advocated by some of the Whigs of England, as the very best guaranty of independence in voters—but I do not mean to argue this question at this time; it would be travelling out of the record—all I intended to say was, that there was no affinity between the question of the extension of Suffrage and the mode of voting.

And as little, as it seems to me, is there between the Maryland advertisement and this question: the gentleman did not even attempt to shew how the supposed cause produced the supposed effect. If Universal Suffrage produced the passage of the law, that subjected land, however large the tract, to the payment of its owner's debts, however small, it is my humble opinion, an eulogy on Universal Suffrage. It proves that the voters, instead of being lawless free-booters, are lovers of justice. Mr. Chairman, may it not be that this correspondent is the debtor and the owner of the land, and that it is because he is made to feel the operation of a wholesome law, that he feels no very good opinion of it? According to Hudibras,

“A thief ne'er felt the halter draw,
“With good opinion of the law.”

But we are told, if the Right of Suffrage be extended, the rights of property will be invaded: we shall have an agrarian law, tumults, confusion, civil discord, and finally despotism. The only answer I have to make to arguments so derogatory to the dignity of human nature in these United States, is, that twenty-two out of twenty-four sister Republics, many of them situated precisely as we are in relation to slave population, have this Free Suffrage, called by the gentleman Universal, and none of these results have happened, or are likely to happen there, so far as we are informed. Virginia and North Carolina are the only States that adhere to the freehold test, and the latter only in one branch of the Legislature. What length of time the gentleman requires for the fulfilment of his lugubrious prophecies, he has not informed us. Believe me, Sir, it is all speculation and theory, against the rights of man, and we have this advantage, if we are theorists and speculators, we speculate and theorise in favour of equal rights, and our theories and vagaries have been reduced to successful operation. They have been called on, and cannot shew one case in point: on the contrary, we

can triumphantly point to the example of twenty-two Republics, our sisters in this great confederacy of States. I have now a gentleman in my eye, who has informed me, that he owns a large real estate in Ohio, and that no where are the rights of property more secure. His language was, "that a twig could not be cut from his premises, without exposing the transgressor to reparation in damages." During the session of this Convention, I have conversed with a distinguished functionary from the State of Mississippi, a native of Virginia, and he informs me, that in that State, the Legislature is in the hands of the non-property holder; and that so far from their having any oppressive taxation of property, their civil list is actually defrayed by a capitation or poll-tax. During the past summer, I was informed by a citizen of Alabama, that a part of that State, which owned least property and fewest slaves, wielded the power of Legislation—situated as to slave property, as the East of this State is to the West, and yet that no abuse had intervened, and that none was apprehended. Let us turn our eyes to the States North, West, East and South of us, and we look in vain for any of the evils pourtrayed in such glowing colours by the gentlemen on the other side of this question. Liberty and law, equality and justice, peace, prosperity and good order, reign throughout their borders; with those few exceptions of popular excitement, incident to, and inseparable from, all free Governments under the sun. Mr. Chairman, the little temporary excesses of a free people must be borne: it is the evil inseparable from the good; there is no human good without its alloy of evil. I prefer even the hurricanes and the tempests of liberty, to the calm of despotism.

And is Virginia less fit for free Government than her sister States? Would the same causes produce different effects here? In my poor judgment, we are better situated to adopt the principle of extended Suffrage than the free States, according to the gentlemen's own theories. The presence of upwards of four hundred thousand slaves entitled to no political power, and excluding perhaps as many of that class denominated by the gentleman from Chesterfield as peasantry, at once diminishes the number of dangerous voters by that amount, dangerous in the estimation of others, not in mine. In addition to this, we have no overgrown cities—no overgrown manufactory establishments. With a population proverbial for their attachment to law, order, and public tranquillity, I boldly say, if any State in this Union can adopt Free Suffrage with safety, Virginia is that State. The extension of the right does not endanger the tranquillity of election—as the experience of the Eastern States has conclusively proven—and if we adopt it, and pursue the policy now in progress, of establishing precinct or separate elections, we disarm these primary assemblies of any dangerous tendencies to excess, which they may be supposed to have.

Have not the non-freeholders of the United States, shewn their capacity for self-government in the election of members of Congress? and your Presidents, from Washington down to the present incumbent? I say the present incumbent, because whatever be my opinions of him, he was the choice of Virginia. Are the delegations in Congress from other States less talented and respected than our own? I mean no disparagement, when I say no. And can a non-freeholder vote discreetly for a Federal and not for a State officer? Look to the New York Convention of 1821, the first fruits of this General Suffrage, which numbered among its members, *Kent, Spencer, Lansing, Rufus King, Sanford*, and many others, though less known to fame, not the less entitled to distinction. Here we have seen a body of men elected by General Suffrage; a comparison with which, in my humble opinion, whatever be the opinions of others to the contrary, would not disparage this freehold Convention of ours, talented as I am willing to admit it to be. Look too, to the Bench, the Bar, the Legislative Halls of New York: you behold a blaze of talents, a constellation of great men, unsurpassed by those of any other State.

Mr. Chairman, the non-freeholders are told they are contending for a shadow—a right, if extended to them, would be of no great importance—that under the old state of things, every thing has gone on well—we have lived happily, and that their complaints are unfounded, and their grievances imaginary. We are told, the owners of the country should govern the country: that the freeholders are the safest depositaries of power; that they hold it in their trust for the whole community, and that through them all are virtually represented. My reply to this is, that a man who has no voice in the Government, holds his rights by the sufferance of him who has; and he that thus holds his liberty at the will of another, is already half a slave. Because the non-freeholders have not been hung up without a Judge or Jury—because they have been allowed their civil rights, the gentlemen say they have not been injured. Free negroes are allowed all their civil rights; the non-freeholders no more: and here I would recall to mind a very proper distinction heretofore taken by the gentleman from Orange, (Mr. Barbour,) between civil and political rights. Civil rights may be, often are, and have been, respected and secure under the veriest despotism: and he very properly illustrated his remark by a reference to the reign of Augustus, and many of his successors. I consider the denial to any man of any portion of his political rights, or giving to his neighbour more than his own, an injury of the gravest character. If

the right be ideal, existing only in the fancy of men, equally so are many of the possessions men hold dearest—liberty itself, reputation, fair fame, all dearer than life, and the invasion of which inflicts the deepest wound on the peace and happiness of their possessors. But I have shewn sufficient injury done to the non-freeholders, by simply announcing, that a Convention has been called and members delegated to it, without consulting them any more than if they were slaves or free negroes—an example, so far as I am informed, never before set in these United States.

Mr. Chairman, in answering the arguments of gentlemen, I have, in some measure, anticipated the grounds of expediency and experience, to which I promised to appeal in the commencement of my remarks: I intended, however, to have carried out my remarks on these two branches of the subject, for the purpose of supplying such views as I had not presented in answering the arguments of gentlemen, who had appealed to expediency and experience. I had intended to endeavor to shew the beneficent effects of extending Suffrage, by allaying discord and discontent, restoring harmony and good feeling among all classes and conditions. I intended to shew its moral and political tendencies, and amongst these its direct influence and operation—to elevate the character of the enfranchised; but finding my strength exhausted, and my voice failing, I will detain the Committee with but a few more remarks in conclusion.

We are told there is a great crisis in our affairs, big with danger to the peace, safety and integrity of the State. I doubt not the sincerity nor the moral courage of those gentlemen, who have admonished us of these dangers; but, Mr. Chairman, I have no faith in these predictions—I am not perturbed by the alarms that have been sounded: the dangers so much dreaded by gentlemen, are the creatures of their own imaginations: that bloody sword which has been brandished over our heads by the gentleman from Hanover, reeking with the best blood of the land, has inspired no terror, in my mind; because I trust that his sword, and that of every true Virginian, like the noble Roman's sword, "for their friends have only leaden points," and that they will never be formidable except to the enemies of the Commonwealth. I trust that ere the time shall arrive to unsheathe a sword to shed each other's blood, "consideration will, like an angel, come to save us from the obloquy." Is it possible that Virginia, of all the States in this Union, the birth-place of sons whose sires were foremost in the revolutionary struggle, has not the wisdom and the patriotism to reform her fundamental law without violent revolution and blood-shed—to perform quietly, and without tumult, an act of sovereignty, which even the Cherokee Indians can perform without violence; for, they lately established for themselves a Constitution for their government? For one moment to suppose separation, disunion, or dismemberment possible, is to pronounce a libel upon the wisdom and the patriotism of our constituents. Believe me, Sir, it would be beyond our power to produce such a result, were each of us to return to our constituents, and exert our utmost powers to bring about so calamitous a consummation. In vain would be all our puny efforts to agitate into a tempest the great body of the people. They would remain, in despite of all our efforts, as tranquil as the great ocean, when it is unruffled by the storm—that ocean, whose awful sublimity, the people in their sovereign power and grandeur, so much resemble.

Let us, then, banish from our minds, and from our deliberations, all intemperate feelings. Let us practice towards each other the republican virtues of temperance, moderation and forbearance, maintaining our opinions always with firmness, but with deference for the opinions of others—feeling the *fortiter in re*, but practising the *suaviter in modo*—eschewing violence, and cultivating harmony and good feeling—for, depend upon it, that as much wisdom and worth as I admit to be concentrated in this body, there is yet more in the community we represent. The eyes and the thoughts of that community are now directed towards this ancient metropolis, the seat of our deliberations—a community, in whom dwells an abiding sense of justice, and a deep-rooted loyalty to social order and law: and that community will not hold *him* guiltless who throws the first firebrand into the fair temple of our political liberty, and saps the deep foundations of our ancient and beloved Commonwealth.

Mr. Thompson having resumed his seat,

MR. DODDRIDGE took the floor, and addressed the Committee as follows:

Mr. Chairman,—I am forced to meet the question of Suffrage at a period of our discussions when I did not expect it. With a very few exceptions, the friends of reform had determined to adjust the basis of Representation in both branches of the General Assembly first. In this they have met with difficulties which they have been unable to overcome. My own opinion was, that this basis in both Houses ought to be established by the same resolution, and such was my first proposition. That proposition was divided at the suggestion of those who thought otherwise, to enable them to sustain the white basis in the House of Delegates, and some other in the Senate. A different basis in the Senate was claimed on two grounds: first, to protect the owners of slaves from oppressive taxation on that species of property, and secondly, to preserve the title from being affected by any species of Legislation. The present views

of a majority are sufficiently known, but it is uncertain whether the Senate will not be placed on a worse ground than this Convention found the House of Delegates. Should that be the case, the greatest end for which the people called us together will have failed, and in this state of things the question of Suffrage is pressed, and we are impelled, while considering it, to act, in some degree, as if the very worst that can happen to the people in adjusting representation, had actually happened. Thus situated, Universal Suffrage would be rendered acceptable to thousands, who never dreamed of its introduction. The proposition of my colleague, from Monongalia, has not yet been fully tested, because of the existing uncertainty of the real ground on which we stand. Should a slave, with a white, Representation be introduced into the Senate; or an exclusive Representation of taxation, or of property, there will be a necessity to array all that the denounced King Numbers, can command. The amendment of my colleague fell but little short of Universal Suffrage. It required the payment of taxes if assessed, but did not require their assessment. It excluded paupers, soldiers, persons adjudged infamous, and all such as had not resided a sufficient time to furnish evidence of permanent attachment to the community. The uncertainty of the ratio, both acquired and lost friends to Suffrage, on the rejection of my colleague's amendment. The rejection of the resolutions of my colleague from Brooke, followed as a matter of course. They did not, substantially, differ from my other colleague's amendment, except in the facilities proposed for a foreigner to acquire Suffrage without an oath, and the exclusion of a native until twenty-two years of age. In these particulars, I would have proposed a small alteration to remove, perhaps, but a seeming objection; but that the fate of these resolutions had already been decided, and that decision, according to known rules, governing a Committee of the Whole, as well as the House, stands as their judgment, until reversed in the House. So far as the propositions of my other colleague from Monongalia, have relation to Suffrage, they are in like manner disposed of. That in relation to education is, indeed, untouched. That most important subject may find another place in our deliberations, or if not, it will remain a subject of legislation, and may form an important adjunct to the Literary Fund.

The question of extending Suffrage in the manner proposed by all my colleagues, although at rest in this Committee, will remain open for decision in the House, where I hope it will be renewed by them, or some of them, when every vote may be spread before our constituents, and the world.

I will, in my turn, offer an amendment, presenting Suffrage in another form—not quite so extended, yet falling but little short of the plans already discussed. My plan is to leave the present right untouched, and to extend it to all those, whether freeholders or not, to whom Government looks for support, whether by revenue taxes or county levies; by impositions payable in money or to be discharged by labour. To go farther than this, would be to trench on the decisions of the Committee; and to stop short of it, would be disobedience to the well known wishes of my constituents.

Mr. Chairman: In support of the principles asserted by the amendment now under consideration, I need not detain the Committee long. My constituents have been so fully heard, and their rights and interests so ably defended by each of my colleagues, that I have, indeed, little more to do, than to implore the Committee, to bear in their recollections, the able, and as I think, unanswerable, arguments of each of them, while I endeavour, briefly to arrange and pass in review the principal topics touched in this debate, as well by them as others. The decisions of the Committee on the resolutions of my colleagues, have settled the principle, so far as the Committee are concerned, that Suffrage shall not be extended to those not taxed, and they have settled nothing further. My effort now, is to extend it to all such as are taxed. This I know, at least, to be conformable to the wish of the whole body of my constituents. My colleagues are equally certain that the public wish is to go farther. Having been very generally from home the last five years, my information is less exact than theirs, but I have no doubt they are correct, and therefore voted with them for the extension they desired.

I admit, the proposition of the gentleman from Chesterfield offers one valuable extension of Suffrage: I mean that which embraces freeholders now excluded. These are the holders of less than twenty-five acres of land, and of lots in towns without dwelling houses, where the value shall come up to the amount required. These freeholders are numerous, and the estates of many of them worth more than sufficient to purchase an hundred freeholds at the prices at which Suffrage has been estimated in this debate. The other class embraced by his proposition, are termors, in a legal sense only. They are virtually freeholders, and are so considered by the gentleman himself. Leases of the description proposed to be provided for, are unknown in the West, and perhaps, are only to be found in or near Norfolk, so that the effects of the provision in their favor will be both limited and local. If Suffrage is not to be extended farther than the gentleman from Chesterfield proposes, this Convention might as well not have been called, if its principal object was, what the gentleman from

Charlotte (Mr. Randolph) affirms it to have been—the *extension of the Right of Suffrage*. The extension of Suffrage, proposed by the gentleman from Chesterfield, is not that which has been called for by public opinion. It is not such an extension of that privilege as was claimed from 1806 to the present time, nor is it that for which a majority of freeholders voted in 1828, when they spoke this body into existence. A brief review of the Legislative proceedings which led to the present Convention, will not only prove the objects for which we have been convened, but that their publicity has been such as to render it almost incredible that in calling this Convention any portion of freeholders who voted for it could have been cheated out of their votes, as has been alleged, or could have been ignorant of the extent to which it would be attempted to extend the Right of Suffrage.

Before entering into this review, I wish to get rid of a difficulty which has been constantly thrown in the way of the present debate. That difficulty arises from the sensitiveness of gentlemen at the use of the terms *aristocracy* and *oligarchy*. By the use of these terms, I have never meant an application of them to the hearts, feelings, or characters of those opposed to me; but to the tendency and effects of the principles they maintain. I have never meant them as personal, or as offensive or abusive epithets. The term aristocrat has been applied to me nearly all my life, and I never took personal offence, because, I knew none was intended by those who used it. They supposed my political principles to be aristocratical, in which I knew they were honestly mistaken. The gentleman from Chesterfield says, he has so far forgotten his Greek as not to remember the meaning of these terms in that language, and he only knows their meaning in good old English, and not the modern dialect of that tongue. I will, in that dialect, explain my meaning of both terms. They are in fact synonymous. Each of these terms is descriptive of a Government whose powers are vested in a minority. A Government thus described, is contradistinguished from a monarchy, or Government in the hands of one man, and from a pure democracy, or Government in the hands of every man. By Government in the hands of a few, we do not mean a small select few. Few and many, as the gentleman from Chesterfield says, are relative terms. In their just sense they are equivalent with the terms majority and minority. In this sense I use them. A Government to be an aristocracy or oligarchy, is not necessarily one in which power is acquired by descent or by patent. This is the sense in which I use the terms, and if I am correct, to constitute a statesman an aristocrat or an oligarch, it is only necessary that he should be one of those holding and exercising the powers of the few over the many—of the minority over the majority. And I maintain, and before I sit down will attempt to prove, that our opponents are not only sustaining in this Convention the powers, wishes and principles of a minority over those of a majority, but the power of the *minority of a minority* over the majority. I will now proceed to the proposed review of Legislative proceedings leading to the call of this body.

In the session of 1806, after many preceding efforts, a resolution, requiring the sheriffs to take the votes of the freeholders at their next election, on calling a Convention, passed the House of Delegates. In the Senate it was postponed indefinitely. At that period we were so divided into political parties, and such was the heat and animosity prevailing, that prudent men on every side feared the call of a Convention. We were not qualified for cool and dispassionate discussion. The causes of our divisions were of a temporary character, and we all hoped to survive them with their effects. We hoped to see the tranquillity of the present hour. But we would not reject the resolution, lest it might be inferred that we acknowledged no defects to exist, or, at least, none of sufficient magnitude to authorise its adoption. The subject, moreover, had not been sufficiently canvassed to elicit public opinion, and in that state of things, the measure was calculated to excite, rather than quiet the public mind. A preamble assigning those reasons as the grounds of it was drawn up, concluding with a resolution of postponement. I now see before me two Judges of the General Court, not members of this body, and another gentleman who is a member, all of whom were partakers of these councils, and, if the curiosity of any one should be excited, he can satisfy it by inspecting the Journal of the Senate of that day. In the year 1814, a bill in the House of Delegates was rejected by a small majority of votes. On that occasion those in the affirmative represented a considerable majority of the people. As that bill was reported, it had the following preamble, viz: "Whereas, it is represented to the present General Assembly of Virginia, that many good citizens desire various amendments to the Constitution of this State; among the most important is the *extension of the Right of Suffrage, and equalization of Representation, and a diminution of the numbers of members elected in pursuance of the present laws and Constitution of this Commonwealth*," &c. The words describing the causes of discontent were stricken from the preamble before the question on the passage was taken. This was done to avoid any legislative commitment of members, as to the causes of complaint or necessity of redress. Although that bill did not pass, and is not to be found on the Journals, a printed copy is to be found in the clerk's of-

fice. By this measure, it is made manifest, as well as by the resolution of 1806, and all the intervening efforts, that the people had settled upon freehold Suffrage as one of the evils demanding redress. The rejection of the bill of 1815, by those representing a minority of the people, increased the public discontent, and led first to a meeting of a political character at Winchester, and after that to the assemblage at Staunton, called the Staunton Convention, of 1816. The memorial of that body, together with numerous petitions, were referred to a committee in the House of Delegates of 1816. Their report underwent a tedious discussion. The bill ordered to be brought in contained a provision looking to the same object with that of 1815, but the objects were more particularly described in the bill of 1816, viz: "To call a Convention to equalize the representation of the free white people of this State, in both Houses of the General Assembly—to equalize taxation—to extend the Right of Suffrage to all persons having sufficient evidence of a permanent common interest with, and attachment to, the community, and provide for such future amendments in the Constitution of State as experience shall suggest to be necessary."^{*}

Here the complaints are specified, and the redress suggested—"to equalize the representation," of whom? "the free white people;" and not of white people and negroes, nor of white people and taxes. Again, where is their representation to be equalized? and the answer is "in both Houses of the General Assembly," and not in the House of Delegates alone. The Convention of 1825, at Staunton, need not be mentioned. Their memorial was the subject of the most laboured debates in the House of Delegates of that year, and in both Houses in the two years following, in the latter of which the prayer of it was granted. Thus it appears, that the question of Suffrage is one among others which has agitated the public mind incessantly since the year 1806; and after it has undergone so many discussions in the General Assembly—in the newspapers and at the Hustings, where it was made a test, is it not paying a miserable compliment to the judgments or recollections of our freeholding-constituents to suppose them ignorant in the spring of 1828, when they voted for this Convention, that the contemplated extension of Suffrage would be among the most prominent of its measures? I will not say how this may have been elsewhere, but I will fearlessly affirm, that my constituents were not imposed on, and that no man was capable of practising such an imposition in my district. Mr. Chairman, permit me to ask, whether after this review, it is fair to deny, *that the freeholders of this State have, in fact, decided the question under consideration, and that we, ourselves, are called here by their authority to execute their judgment.*

While on the question of Suffrage, permit me to follow the example of others, by bringing to view, as connected with it, the principal questions in dispute, and to cast from the consideration of it all such matters as we agree about. The remarks I intend to offer on this head will serve to shew, and I think to demonstrate what I promised to prove, that our opponents here are but the representatives of a minority of a minority.

In determining, then, who are, according to all our principles, the only safe depositories of political power, whether we commence with the fall of Adam—whether we draw our maxims from the savage, the natural or the social state of man—by whatever path we have travelled in our researches or reasonings, we have all arrived at the following results—We all agree to exclude the other sex—We all concur in excluding infants, those under military bondage in actual service—those rendered infamous by their crimes, and those of unsound mind. Who then are they whom we all agree to be fit and capable depositories of power? They are males of twenty-one years of age and upwards—of sound mind, not infamous, nor subject to another man's will—that is, freemen. So far we are all agreed, from whatever reasoning we may have arrived at this agreement. Questions of policy, however, present themselves for our decision, and as a matter of policy we require citizenship and residence for a certain time, but those opposed to us require in addition to age, citizenship and residence, an ownership of part of the soil of the State, believing that nothing less than this furnishes sufficient evidence of interest and attachment to it. In this we differ, and this presents the great question of policy on which we are so seriously divided. The gentleman from Chesterfield said, very significantly, the other day, that he knew who he was who had asserted that the non-freeholders were a majority over the freeholding class of the community. I do not know to whom he alluded, but I will say that the non-freeholders in the Western country are to the freeholders a majority of about three to two. I have understood that a census of population was lately taken in the county of Frederick, from which it appeared that there were about two thousand five hundred non-freeholders in that single county, excluded from Suffrage, and who would be otherwise safe depositories of power under all our principles, and I cannot doubt that they are a majority throughout the State. We perfectly agree as to those who are the depositories of every scintilla of power, but differ only in the

* See Journal of House of Delegates of 1816, page 180.

evidence of attachment to the community that such ought to possess before we admit him to participate in its exercise. On our part we agree that this evidence ought to be afforded, but we insist that residence, birth, business, choice and other circumstances, furnish this evidence, with satisfactory certainty. If I am right in believing the non-freeholders to be a majority of the qualified depositories of power, then I must be right in charging those opposed to us with supporting the pretensions of a minority to govern a majority. But the proof does not stop here.

I have understood that the freehold vote on the question of calling a Convention, was a very full one. From all the information I have been able to collect, from conversations with members of this Convention, and of the last House of Delegates, I have come to the conclusion that about one-seventh part of those qualified to vote did not exercise that right on that occasion. If I am right in this estimate, the numbers of qualified voters under the present laws will be ascertained thus :

They who voted for a Convention were,	21,893
And they who voted against it,	16,887
Making,	38,780
To this number add one-seventh, not voting,	5,540
Making the number of voters,	44,320

If this be true, and if none but freeholders ought to vote, then gentlemen are here sustaining the pretensions of a minority of those, who alone ought to be entitled. Add to the number who voted against a Convention sixteen thousand eight hundred and eighty-seven, one seventh part of that number, and we have nineteen thousand three hundred and twenty-nine freeholders, who are opposed to reform, and if all the freeholders are but a minority of qualified persons, then it is manifest that the gentleman from Chesterfield and those who act with him, are exerting themselves here to carry into effect the principles of a minority of a minority—a *minority* of the freeholders who are a *minority of the whole* ; and the intentions of nineteen thousand three hundred and twenty-nine men alone, if carried out into the form of a Constitution will result in establishing the will of that handful as the Government of this whole people. This will be an oligarchy. Nor less will their will be effectual to rule and control the community, if it should prevail to prevent those amendments of the Constitution, which are required by the majority. This latter consequence, I fear, is but too probable, and should this be the result of our labours, the effects will be deplorable.

The gentleman from Southampton, (Mr. Trezvant,) joining in self-commendation of our public morals, attributes their purity to our Constitution and laws; urging, that Governments have a tendency to form and correct public opinion. That legislation has this effect, is a political truth—it is not the whole truth, however, but only half.

The law-giver, to be wise, must regard public opinion. Wise laws, in a great degree, spring out of that opinion and conform to it. While public opinion acts on the legislator, his laws act back on that opinion and assist to enlighten and control it. Thus, legislation and public opinion mutually act on each other as moral cause and effect. This consideration suggests the duty of Government to consult the will and feelings of the people under every aspect and every change—a duty so well defined, and so ably enforced by my worthy colleague from Brooke, (Mr. Campbell,) that I have only to beg the Committee to bear his argument on this topic in mind. I will not attempt to add to it.

Having shewn how many persons are entitled to Suffrage at present, I will proceed to enquire what number will be added to them by extending the privilege to all persons paying a revenue tax, and how many more, if those subject to levies and not taxes were embraced. Those charged with land tax are ninety-two thousand—From this whole number are deducted, first, all females; second, all male minors, and persons of unsound mind; third, all foreigners; and fourth, all freeholders holding real estates less than that which at present confers the right. These deductions leave, as I suppose, the number I have already stated as that of the qualified voters, viz : forty-four thousand three hundred and twenty—The number of persons paying taxes on personal property are ninety-five thousand; of these, I may say, each person paying a land tax is one, and therefore, deducting the qualified voters from those paying a property tax, there will remain about fifty-one thousand; but to ascertain what portion of these will be admitted to Suffrage by my present proposition, I have had examinations made to ascertain what proportion of the ninety-five thousand are females, and find them to be one-ninth of the whole, and supposing that male minors and persons labouring under disabilities, may amount to as large a proportion as all females of every description, (which is allowing too much,) I arrive at the result in the following manner :

Number of persons paying taxes on personal property as stated in the Commissioners' books,		96,856
Deduct for females of all descriptions one-ninth,	10,650	
Ditto for infant males and others,	10,650	
Ditto all those now entitled to vote, as freeholders, and also on the property list,	44,320	
		<hr/> 65,620
		<hr/> 30,236

This would leave thirty thousand two hundred and thirty-six persons to whom; by my present proposition, I would, extend the Right of Suffrage. By this addition the number of voters will be augmented to seventy-four thousand five hundred and fifty-six. Should this proposition prevail, it will encourage me to propose its further enlargement to all persons subject to levies, or other county impositions payable in money or labour. It is difficult to arrive at any correct estimate of the number of males twenty-one years of age, who are subject to road laws and levies. From militia returns, and from imperfect lists of titheables in our power, it is reasonable to estimate them at about twenty-two thousand. These added to the thirty thousand two hundred and thirty-six, who pay a property tax, make a total of fifty-two thousand two hundred and thirty-six men, twenty-one years of age, of sound mind, and therefore safe depositories of political power, who are wholly disfranchised in Virginia; others make this number greater, but I am sure my calculation is within bounds. The class, thus excluded, have been claiming their rights ever since 1806. They have not been noisy and troublesome, because they depended on their freeholding brethren, whose honorable exertions in their favour have been incessant. The excluded classes were told from every quarter to be patient, and the freeholders, their neighbours, would deal liberally with them. When the vote was taken on the law of 1827, whether a Convention should be called or not, they were excluded, as they had been on the passage of that law. They were again excluded from the polls when the members of this body were elected, because those who made the law of last session were, like ourselves, the agents of freeholders. Last June these people were assured that this Convention would make full provision for them: this they believed and rested in quiet. A majority of freeholders are here ready by their delegates to redeem every pledge: they are manacled, however, by the law which scaled their power by the census of 1810. Instead of relieving the majority of qualified persons, members of this body, representing nineteen thousand three hundred and twenty-nine freeholders, are tendering to us with an unrelenting hand, their ratios of representation in three forms—first, white persons and taxation; second, the Federal number, and third, taxation alone in the Senate, as if determined on an aristocracy of wealth in one house at least. I have shewn, that the freeholding class qualified to vote by the present laws are to the number of qualified persons as forty-four thousand three hundred and twenty, to fifty-two thousand two hundred and thirty-six; of the former number, twenty-one thousand eight hundred and ninety-three voted for relief: to these are to be added one-seventh of their number, who omitted to vote, and three thousand one hundred and twenty-seven, making twenty-five thousand and twenty freeholders on the side of the non-freeholders, and of course, against every basis except the free white population. To come at a satisfactory estimate of popular strength, I think it fair to add to the excluded classes, the freeholders who voted for this Convention and their proportion of qualified voters who did not vote: this will present us with an astonishing state of things; nineteen thousand three hundred and twenty-nine freeholders, opposing the will of twenty-five thousand and twenty of their own class, and of fifty-two thousand two hundred and thirty-six qualified persons, not of their class; that is, nineteen thousand three hundred and twenty-nine men, against seventy-seven thousand two hundred and fifty, and (owing to the injustice of the law under which we are acting) with a fair prospect of success. Here we behold that oligarchy we deprecate! After the rise of this Convention, if nothing be done for their relief, this large proscribed class will not again be lulled to sleep—their eyes are on us at this moment—not a paragraph in the Gazette escapes them—they will discover in these, that they have no attachment to their country in common with a freeholder. They will read in the speeches of members, that *their* allegiance is that of the heart, that there is another allegiance which is the creature of reason. After all this, should this country be again involved in war, how can these oppressed, excluded, disgraced men, be entrusted to bear arms in its defence? When the gentleman assures us, that the allegiance he bears the Commonwealth is that of the heart, I believe him—not because he declares it, I know it by comparing him with myself, and such as I am, I suppose every other member to be. Rely upon it, all those to whom Government looks for support, either of general or county administration, in peace or in war, owe it the allegiance of the heart, or they ought not to be trusted with its defence; and thus allegiance ought not to be worn down by that oppression which breaks the heart.

I have always considered our system of making and repairing public roads as peculiarly oppressive. Farmers and others in the West, who employ white labour, feel it in the wages they are compelled to give. In some places a poor man walks ten or fifteen miles with his spade, axe, or mattock, to work on roads. In many places, ten and twenty days in the year are required, and this from journeymen, who have not yet acquired stock enough to commence for themselves—from labourers and others who have no property in the world. I had hopes, that after reforming Representation, one of the first measures of legislation would be, to abolish our present road laws, and with them every species of poll-tax; until then, I have no hope to see this great evil cured. I have witnessed so many abortive efforts to put down these oppressive regulations, that until Representation is reformed, I never hope for a successful one.

Mr. Chairman, I do not concur in the expressions of alarm for our divisions. There is not the least danger without. When I before spoke of numbers, I meant any thing else than a threat of forty-two thousand bayonets. I said that if our hopes were to appease the anxiety of so many men, these hopes would be fatally blasted by a rejection of their just claims, and to urge, that soon, very soon, these claims must prevail. I am happy to find that but one gentleman, (Gov. Giles,) considered me as uttering a threat, and that but one other gentleman, (Mr. Stanard,) looked on my language as uncourteous. Many expressions escape us in the heat of debate which our own reflections would chasten. Of this description, was the figure of the bloody sword used by the gentleman from Hanover, (Mr. Morris,) and the declaration of the gentleman from Chesterfield, (Mr. Leigh,) that a Government in the hands of a majority of numbers, would be such an oppressive and insupportable tyranny, *as no man ever did or would submit to*. There is no danger of a dismemberment of this State, I hope, and yet it *will soon* be ruled by numbers. To those who are in the habit of looking to such an event, I will communicate an advice once given to myself, by Major Jackson of Philadelphia, who I was told, was the last surviving member of General Washington's military family. Speaking of the purchase of Louisiana as an acquisition likely to produce a division of the Union of these States in time, the gentleman I have mentioned, cautioned me in a low voice thus: "When any man speaks of a division of these States, as a thing desirable or possible, he does more than commit an error." And I can assure gentlemen here, that when they speak of a division of this State, as a thing to be desired, they do "more than commit an error."

We are told from several quarters, that if Suffrage be extended, the purity of our elections will be destroyed, and tumult and riot take place of peace and order. The gentleman from Chesterfield, almost questions the words of my colleagues, when speaking of matters within their own knowledge. They had said that their constituents were well acquainted with the effects of General Suffrage, in the States on our border, and that they nevertheless desired that privilege extended here as far as we propose. That gentleman declares, he never heard of one Virginian, who had ever seen an election in Pennsylvania, Ohio, or Kentucky, who was not cured, forever cured, of a desire to see Suffrage extended, or the ballot introduced. I, in my place, am bound to confirm what my colleagues have declared. My experience is not great; indeed, I never saw many elections in Pennsylvania, and none in Ohio; those I saw in Pennsylvania were on the border of Virginia, where many of the inhabitants were of Virginia origin, having been inhabitants of our county of Yohioghany, so gallantly given away by the wisdom of the men of 1776. I never saw there, a more riotous election, than that of 1799, in this city, when one of the candidates for Congress, was a gentleman now a member of this House, and the other, the father of another member; he was personated on that occasion, by a third member of this Convention, who, since then, held for twenty years, the office of Attorney General, during all which time, he says, the whole Government went on very well.

Mr. Chairman,—The effort we are making is one, the object of which, is to reform our Constitution, on our own principles, and to give practical effect to those declared in the Bill of Rights. What we contemplate is not a revolution. The Government is an elective Republic, and we mean to leave it so. Yet we are warned of the dangers and horrors of revolution. Revolutions, it is said, never stop at the objects first had in view, but the ball once set in motion, goes downward on the road to anarchy or despotism, and never stops. One false step can never be recalled; the descent to ruin is easy, but to return, difficult, if not impossible: *hoc opus, hic labor est*. Could we forget where we are, and listen to the speeches of gentlemen in opposition, we should forget the business we are engaged in; we should imagine we were listening to Burke on the French Revolution. All the horrors of that volcano are set before us, as if in our madness, we were ready to plunge into it. We are likened to the impious priests of France in the last age; we are called fanatics, dreamers, and even drivellers, by a gentleman of this city: the history of the ancient Republics is invoked to alarm us: at one time it is said, that each of these perished when Suffrage was made general, and Governments established on the rights of numbers. With much more

truth we are again told, that these Republics with all their temporary Governments, have fallen, without leaving in their histories any thing for our instruction: the truth is, that neither in antiquity, nor in the ages succeeding the fall of Rome, were there any Governments formed on our model; not one. Before ours, there never existed one Government in the world in which the whole power was vested in the people, and exercised by them through their Representatives; in which, powers were divided between separate and distinct bodies of magistracy, and in which no nobility or privileged order existed. It is in vain, therefore, that we are incessantly lectured like school-boys about the Republics of Greece, Sparta, Lacedæmon, Rome, and Carthage. In our sense of the term, in the Virginia sense of it, neither of these was a Republic; they have perished indeed, as all others of the same age have done; some by war and conquest, some by one cause, and some by another. Perhaps, among the inscrutable decrees of Providence, there is one by which all Governments like the men composing them, are to have a beginning, a maturity, and an end.

Gentlemen who oppose us, continually turn our attention to England, as the country whose history is replete with instruction, and from whose Constitution and laws, we have borrowed the trial by jury, *habeas corpus*, and the scheme of Representation itself. I concur with the gentlemen in their appeals to this source of information. I believe with the gentlemen opposed to us, that the Government of England is the best that could exist for that people; it would not do for us. We have dispensed with king, nobility, and hierarchy; we have no use for these establishments. I do not believe the English people could be governed by our Constitution and laws, and I am the more proud of them and my country, in proportion as I am satisfied that no people on earth, ourselves excepted, could sustain our free institutions. It cannot be denied, that in the elective system of England, in her common law, in her charters, and customs, we are to look for the sources from which we and our ancestors have extracted our best principles. Thus far I do most heartily concur with the gentlemen from Chesterfield, from Richmond, and from Orange.

But the ball of revolution, once set in motion, rolls down to anarchy first, and then to despotism! It never returns! And is it really so? Permit me to call the attention of the Committee to some of the civil revolutions of England, (for there have been several,) in which the ball of revolution *ascended*, and stopped at the point desired; and the fruits of which, are now the boast, both of that country and of this. On what does the Englishman pride himself, when contrasting his condition, with that of the subject of any other country? The answer readily occurs; the great and lesser charters of English liberties; jury trial, the *habeas corpus*, the common law, the Right of Suffrage; in short, the Englishman rejoices in his civil and religious liberties; in a Government of laws. Among all his blessings, he is in the habit of naming *magna charta* as the first: when and how was that charter obtained? It was obtained by *revolution* at Runny Meade. A majority of the Barons demanded of King John a charter of privileges and liberties, as English subjects: the King refused, and this majority of Barons armed themselves, (*for numbers* ruled there.) The King wrote to them, to know, what were these liberties and privileges about which they were so anxious. The Barons answered, that the privileges they demanded were granted by the King's father. From this answer it is supposed, that the great charter had first been granted by King Henry the third. This fact is not certain however, nor is it important: the King signed certain articles of agreement, promising a charter of the rights demanded, which the Barons had drawn up in writing, as we propose to do: he engaged to meet them on a certain day, in July, 1215, to give full effect to this agreement. Instead of performing what he had promised to do in good faith, the King interposed a difficulty; that difficulty was not a ratio of freemen and villains, of men and taxes, or of federal numbers. He wrote to the Pope, and placed his kingdom under his protection, offering himself for a crusade to the Holy Land, and when the day arrived, instead of performing his engagement, he informed the Barons of his intentions, and that his kingdom being now the patrimony of St. Peter, they could not touch it without impious, (if I recollect we have heard this word here,) hands. The Barons, on receipt of this evasive answer, attacked and carried several of the King's castles; and, as the Pope could give no assistance, and St. Peter came not to claim his heritage, the King and his *minority* had to yield to a *majority* of Barons. The charter was signed and sealed, and with the agreement which preceded it, is preserved in the tower of London to this day. This charter is a body of what we would now call common law, of family law. The ladies of that day were as effectually represented by those Barons, as they of the present, are by us. Their rights of dower; of quarantine; of protection during minority against disparaging marriages, are enforced; not granted, for they had existed from time immemorial.

This glorious civil revolution, was effected in two or three short months, in the year 1215. Between that year, and the year, 1688, several revolutions occurred and were attended with the same happy results, the consequences of which, were frequent renewals of the great, and the additions of the lesser charter, and the *articuli*

super cartas. In each of these revolutions the ball was rolled up, and, at the end of each, the rights of the people who rolled it, acquired additional strength.

I pass on to the well-known revolution of 1688. Until this time, England had never known the blessings of an independent Judiciary. The tenure *quumdiu bene se gesserit*, had never been inserted in but one commission. Great as was the value placed by our Whig ancestors in 1688, on their charters, their laws, their jury trial, and their writ of *habeas corpus*, they looked upon these rights and privileges, as in some degree of danger, so long as the Judges were dependent on the King or his ministry. The gentleman from Chesterfield said the other day, that when the King is weak and profligate, the rights of the people gain ground. William was weak at least: his ruling desire was to insert in the act of settlement, a provision limiting the succession to the heirs of his kins-woman, the Princess Sophia of Hanover: he was too weak to perceive that his Parliament were determined to do this at all events; that no other course could consist with their policy. The Parliament practised on the King's weakness, and as a consideration for the settlement of the Crown, extorted his concession, that the Judges of England should hold their commissions *during good behaviour*. Unfortunately for Scotland and Ireland, this provision was omitted in each of their acts of union with England, and the effects of Judicial dependence and independence, have been manifested in the three kingdoms in our own days. A great effort, common to the Whigs of England, Ireland, and Scotland, was made at the same time. The object was Parliamentary reform. The necessity of reform was manifest. The means proposed were orderly and constitutional. Government endeavored to suppress the United Irish in Ireland, the friends of reform in Scotland, and corresponding societies in London. In conflicts between Government and people, considerable excesses happened in each kingdom. The laws of Ireland differ from those of Scotland, and the laws of each from those of England; I mean those relating to crimes and punishments: the greatest difference was in the Forums, before which the subjects of each kingdom were brought for trial. The Englishman, was brought before independent Judges; those of Ireland and Scotland, before Judges amenable to the King and his ministers. The Irishman suffered death; the Scotchman banishment; while the Englishman was acquitted and greeted as a patriot. Englishmen were not yet satisfied with the concession of William; the Judges were not secure from a demise of the Crown, and this defect, at length, was remedied by statute, in the reign of one of the George's. Here is a brief outline of the history of four or five civil revolutions, if our present effort may be called one. All these happened in our mother country. Before the first, the Government of that country was a feudal monarchy, a despotism; since the last, it is a free limited monarchy. These civil revolutions have made that Government such, that it is receiving every day the warm and reiterated plaudits of our opponents on this floor. From the last of these revolutions, we have copied our independent Judiciary; and, although, I will aid to create more responsibility there, I pray, that we, and our posterity to remotest time, may never be weak enough to part with this surest, greatest, sheet-anchor of every free State.

Mr. Chairman, what do we hear on this occasion, more than the alarming predictions, melancholy forebodings, and evil auguries usual on every question of reform? When were men in power ready for reform? When did they yield power except to force or fear? We have lived to see Catholic emancipation in Ireland, after the failure of many attempts to accomplish that measure. On each of these occasions, ministers answered according to custom; sometimes, that the country was at war with France, or the whole Continent; sometimes, the Christian religion was in danger; and at others, that reform would jeopardize both Church and State. Their predictions were never more fearful and gloomy, than on the eve of Catholic emancipation. They were precisely of the same nature, and of the same justice, with those of our opponents here. The Catholics are emancipated, and England has gained strength by that act of justice. By a similar act of political emancipation, Virginia will increase her strength and happiness, notwithstanding the forebodings of men about to part with power.

Permit me to ask, if all civil revolutions go downward, and necessarily tend to anarchy and despotism, what do gentlemen make of that of 1776? Perhaps, there are those who think us anarchists at the present moment.

History does not present us with the arguments of King John and his minority, in 1215; these are lost in the mists of time. The same may be said of all revolutionary transactions before that of 1688. With the Tory arguments of that time, we are well acquainted. The exclusive friends of the old Constitution of England, treated all innovation as dangerous, and as tending to destroy the royal prerogative. There was a respectable party opposed to that revolution, when it took place, and many an honest Englishman is of that opinion at the present day. There always was, and there always will be, a strong party in every country opposed to reform, however necessary, and however apparent that necessity, and their intentions are generally

honest, and their views patriotic. Between the contending parties on such occasions, time is the judge, and experience the arbiter.

Mr. Chairman,—I acknowledge the kindness of the Chair and Committee, manifested in their attention to my remarks on this trying occasion.

Mr. Stanard offered, by way of conciliation and compromise, the following amendment to the amendment of Mr. Leigh :

“ And every such citizen who shall be a lessee of a tenement of the yearly value of dollars, for a term of or more years, by deed duly recorded three months before the time he may offer to vote, and of which lease at least years shall be unexpired at the time he offers to vote.

“ And every such citizen who shall within one year before he may offer to vote, have a tax or taxes to the amount of assessed on property, whether real or personal owned by him, and shall have actually paid such tax or taxes at least three months before he shall so offer to vote.”

Mr. P. P. Barbour called for a division of the question, and it was divided accordingly.

Mr. Johnson suggested, that if the present amendment should be adopted, it would supercede that part of Mr. Leigh's amendment which admits termors with leases renewable at pleasure. He pointed out as an objection to that part of Mr. Leigh's amendment, that leases of the description he has mentioned, instead of being as now confined to Norfolk, would be multiplied every where, and so drawn as to confer the Right of Suffrage, and yet not to extend beyond a single year or other limited term : this could easily be effected by making the fine to be paid for the renewal of the lease so large that no tenant could pay it.

Mr. Nicholas felt embarrassed in voting for Mr. Stanard's amendment before the blanks were filled. He thought Mr. Leigh's more safe.

After some desultory conversation on the details of Mr. Stanard's amendment :

Mr. Mercer expressed his regret at the present course, and his preference to have the resolutions of the Legislative Committee taken up and decided on in their order. The present amendments applied to the first three resolutions—he wished to see the fourth taken up, which related to house-keepers.

The question was now put on the first member of Mr. Stanard's amendment, viz :

“ And every such citizen who shall be a lessee of a tenement of the yearly value of dollars, for a term of or more years, by deed duly recorded three months before the time he may offer to vote, and of which lease at least years shall be unexpired at the time he offers to vote ;” and decided in the negative : Ayes 37, Noes 52. So the first clause of the amendment was rejected.

The question now recurring on the second part of Mr. Stanard's amendment, Mr. Johnson expressed his decided predilection for the amendment of Mr. Leigh (slightly modified)—but expressed his willingness to vote for Mr. Stanard's proposition, if it should prove the best that can be got. He declared himself the advocate of a landed basis for the Right of Suffrage—which he pressed as a ground on which both parties might meet.

MR. MONROE then said : It is with great regret that I rise to address the Committee at this late hour ; but, as I presume the House will take a vote on the question to-day, I deem it my duty to do it. Having stated, in an early stage of this debate, that I thought that the Right of Suffrage might be extended beyond the limit prescribed by the present Constitution, and with advantage to every class in the community, it is my desire to show to what extent, I think it may be carried, and within what limit it should be confined. I feel bound to do this in explanation of my own conduct, and that my principles may be understood by my fellow-citizens. I will be very brief.

By the resolution as reported from the Legislative Committee, as well as by the amendments to it, which have been proposed, the Right of Suffrage is secured to all who now enjoy it. This is perfectly right, and if any individual holds a freehold interest which has come to him by descent, devise, marriage, or marriage settlement, or by reversion of a voter, which it is proposed to make very moderate, the Right of Suffrage is to be extended to him also : and by another amendment which is now before the Committee, it is proposed to extend this right to lessees. I confess, that under certain modifications, I shall readily agree to this. But my object is to confine the elective franchise to an interest in land : to some interest of moderate value in the territory of the Commonwealth. What is our country ? is it any thing more than our territory ? and why are we attached to it ? is it not the effect of our residence in it, either as the land of our nativity or the country of our choice ? Our adopted country ? And of our attachment to its institutions ? And what excites and is the best evidence of such attachment ? Some hold in the territory itself ; some interest in the soil : something that we own, not as passengers or voyagers, who have no property in the State, and nothing to bind them to it. The object is to give firmness and permanency to our attachment. And these are the best means by which it may be accomplished. Mere transient passengers may be foreigners. As to the citizens of

other States of the Union, I consider them as citizens of Virginia, and so identified with us, that they may be relied on in that character. But our country is an asylum for the oppressed of all countries; they fly to us from all regions of the globe, particularly from Great Britain; and more especially from Ireland—they fly to us from poverty and oppression. I am willing to receive them; but I consider those people as very different from ours; and as they are not fit to be at once admitted to equal political rights among us, they should not be permitted to participate in the sovereignty, nor get hold upon the Government till they have been rendered fit for it by the acquirement of different feelings and principles.

Ours is a Government of the people: it may properly be called self-government. I wish it may be preserved forever in the hands of the people. Our revolution was prosecuted on those principles, and all the Constitutions which have been adopted in this country are founded on the same basis. But the whole system is as yet an experiment; it remains to be seen whether such a Government can be maintained; and that it may, in our Union, I have no doubt. But wise provisions, as to the exercise of the Right of Suffrage, and the powers of Government, are indispensable for its preservation. We ought to profit by the examples of every other nation; we ought to look at the history of other Republics, and see the causes which led to their overthrow. When we find that the most important and democratical among them have been soon overthrown, we ought to guard against the causes which led to their downfall. We have come here that we may prepare a form of Government for our native State. The experience of all the other States and our own experience are before us. But the experiment is still in operation, and nothing can be considered as conclusive, especially in the new States, which are of such recent establishment. Of the effect produced by the original organization, in the other States, and by the changes they have severally made in it, different reports are given in this House, on the representation of different parties in each State, which proves, that the experiment is still depending and its result unknown. I have the utmost confidence in the integrity of gentlemen on both sides of the question in this House. I can see great cause for a difference of opinion between them. It is very natural that those on the one side should feel a strong inclination to give the greatest possible extent to the rights of every citizen, whatever may be his circumstances. It is equally natural that doubts should be felt on the other side, when the experience of other Governments has admonished them of danger.

There are three great epochs in the history of the human race in regard to Government! The first commenced with the origin of the ancient Republics and terminated with them. The second commenced at the overthrow of the Roman Empire; with the Governments that were established on its ruins, and comprises their career to the present time. The third and last, commenced with the discovery of this hemisphere, the emigration of our ancestors, to this section, with their colonial state, the revolution which followed, and the Governments founded on its principles. Each of these epochs, is marked by characters, peculiar to itself. The Governments of the two first, warn us of dangers which we should always have in view. Athens and Lacedæmon are the best specimens among the Greeks—Carthage and Rome are the only others worth considering. And first let us look at the state of Athens. There we find the people *en masse* in one great assembly, possessed of the power of the Government under certain modifications. The Government and sovereignty were united in them; but the people could originate nothing. A Senate must propose all that was done—and that Senate consisted of the wealthy. The Government had commenced with nobility and a Prince, and so it continued till Solon formed the Government and instituted a Senate. This State consisted, therefore, of two classes, the rich and the poor. And as was truly observed by the gentleman from Richmond (Mr. Nicholas,) it lasted but ten years, when it was overthrown by Pisistratus, who deceived the people.

Lacedæmon was under two Kings and a Senate who held their places for life. This Government lasted longer. And why? The lands were divided equally; the people fed together, Kings, Senators and people at the same tables. This had a tendency to connect them together; at the same time all intercourse with foreign nations was prohibited. The bonds were close; and the Government was never overthrown until these bonds were first broken. Commerce introduced war and acquired plunder, whereby the manners of the people were changed. But would any body think of introducing such a Government here?

The same remarks apply, in substance, to Carthage and to Rome. My idea is, that the causes which overthrew all these Governments are so many warnings for us to profit by. Of the peculiar characteristics of the second epoch, and of the differences between ours and both, by which we were placed on more advantageous ground than either, I cannot now enter into.

I think if the Right of Suffrage should be so extended as I have suggested, I can see in that event no remaining cause of variance. All who wish to enjoy it can pro-

cure it by a few months' labour, and if public virtue and the general abhorrence of corruption shall prevail, as I hope and believe they will, we shall have those who enjoy the right, so nearly on a level with those who do not, that their influence will operate to tranquillize the whole mass of society, and induce the poor man to use exertions which will soon obtain for him the right of voting.

I thought it my duty to shew to the Committee how far I wished the right should be extended, and where we ought to stop: I think we are not in a situation to go farther.

Mr. Randolph said, he believed he was not singular in the opinion he was about to express, (though he might be the only member of the Convention, by whom it was uttered,) of sincere gratification, on finding that the gentleman who had just taken his seat, was in favour of what he (Mr. R.) conceived to be the only safe ground, in this Commonwealth, for the Right of Suffrage—he meant *terra firma*: literally *firma*: The land. The moment, said he, you quit the land, (I mean no pun,) that moment you will find yourselves at sea: and without compass—without land-mark or polar star. I said that I considered it the only safe foundation in THIS COMMONWEALTH. For whom are we to make a Constitution? For Holland? For Venice, (where there is no land?) For a country, where the land is monopolized by a few? where it is locked up not only by entails, (I do not mean such as the English law would laugh at,) but by marriage settlements, so that a large part of the people, are necessarily excluded from the possession of it: but for a people emphatically agricultural; where land is in plenty, and where it is accessible to every exertion of honest industry. I will venture to say, that if one-half the time had been spent in honest labour, which has been spent in murmuring and getting up petitions, that the signers might be invested with that right, all-important at muster-rolls, at cross-roads, and in this Convention, yet not worth three months' labour, the right would have been possessed and exercised long ago.

I will not go into the discussion; I rose merely to express my extreme satisfaction, that the gentleman who has just taken his seat, is of opinion, that we ought to abide in the land.

The amendment of the gentleman from Chesterfield, as proposed to be modified by the gentleman from Spottsylvania, is one which I do not exactly understand. So far as it depends on a landed qualification, (which is the great principle of our present Government,) the proposition of the gentleman from Chesterfield, appears to be only an equitable modification of it, and to retain the great stable, solid qualification of land, which I view as the only sufficient evidence of permanent, common interest in, and attachment to, the Commonwealth.

I had thought, that the experience of this Commonwealth, and of the United States, had read us such lessons on the subject of personal security, that we never should think of leaving real. As I am not sufficiently acquainted with the measure proposed by the gentleman from Spottsylvania, I respectfully move that the Committee do now rise.

The Committee rose accordingly, and the House adjourned.

MONDAY, NOVEMBER 23, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong of the Presbyterian Church.

The President laid before the Convention the following letter from Mr. Taliaferro:

RICHMOND, 23d November, 1829.

SIR,—A domestic occurrence, which threatens the most serious family affliction, demands my immediate presence at home. In obeying this call, my first object is to provide, in the most effectual manner, for the future execution of the important trust with which I am now charged; and as I do not, under existing circumstances, consider it safe and proper, that the District, in whose delegation I am associated, should be left by me without its entire representation, my design is to resign. I therefore, beg leave, through you, to announce to the Convention, that my right to a seat in that Assembly is hereby vacated: My colleagues will proceed at once to execute the function which the Act of Assembly, in such a case, devolves on them. May I be allowed to say, that very many considerations combine to excite in me feelings of deep regret at the necessity I am under to withdraw myself from the Convention—and to add, that no considerations, certainly none personal to myself, could prevail on me to do so, unless the power existed to supply my place without possible embarrassment to my constituents, from my resignation. I cannot, in justice to my feelings, close this communication, and not express the cordial hope, that the result of the work in

which you are engaged, may unite, in harmonious accord, the affections and interests of all the citizens of this Commonwealth; and that, with sentiments, Sir, of the most profound respect for you, and for the body in which you preside, I am your friend and fellow-citizen,

JOHN TALIAFERRO.

*The honorable JAMES MONROE,
President of the Convention.*

The letter was laid upon the table.

Mr. Neale then rose and signified to the Convention that the remaining Delegates from the District to which Mr. Taliaferro belonged, had selected as a suitable person to fill his place, John Coalter, Esq. of Stafford county, (one of the Judges of the Court of Appeals.)

The Convention then went into Committee of the Whole, on the Constitution, Mr. Powell in the Chair, and the question being on the amendment proposed by Mr. Stanard to Mr. Leigh's amendment of the third resolution of the Legislative Committee. [See Saturday's proceedings.]

MR. MONROE then addressed the Committee in nearly the following terms:

Mr. Chairman,—On Saturday, I engaged the attention of the Committee for a few moments in explaining my views with regard to the extension of the Right of Suffrage, but as it was near the hour of adjournment, I was unwilling to prolong my remarks. There are some ideas which I did not then state, and which I beg leave now to explain. I stated it to be my view, that the Right of Suffrage should be confined so as in some form to be connected with the soil—it was my idea that those who enjoyed it ought to possess some interest in society, and to have a home: at the same time I wished to see the interest limited as much as possible, and made as moderate as prudence would allow. My reasons for desiring that the elective franchise should be connected with the soil, were then stated, and need not now be repeated. My reasons for wishing to make that interest as moderate as practicable, I wish now more fully to explain.

I observed, that in fixing a Constitution for the State, either by the amendment of the old one or the adoption of a new, we ought to profit by the examples of other Governments, and particularly of the ancient Republics, as furnishing us with a warning of the dangers to which free Governments are exposed, but that none of them could present to us such an example as we ought to follow: but as a warning, it may be very profitable that we should keep them in view. Here the sovereignty resides in the people: ours may truly be called a system of self-government: and my object is, to preserve it in their hands forever. It is with that view, I would look at the dangers to which it is exposed.

I remarked that there were three great epochs in history, as it respected Government. The first of them commenced with the ancient Republics, and ended with their overthrow. The second, with the overthrow of the Roman Empire, and the establishment of those Governments which were erected on its ruins. The third and last commenced with the discovery of this hemisphere: the emigration to it by our ancestors, the Governments which were formed in our colonial state, and after our revolutionary struggle, with the Governments which were formed on the principles of the revolution. I gave an illustration of this remark, so far as relates to the first period, viz: during the continuance of the ancient Republics.

What are the characteristic features of those Governments, and what the warning they hold out to us? The people who settled on the ruins of the Roman Empire were rude in their condition and character: their Governments were monarchical, accompanied with an order of nobility. In all the great powers, with the exception of England, the Government was despotic; and in England herself, liberty had, through a long space, no solid basis on which to rest. The effort there was to avoid despotism; and the most that the friends of liberty aspired to, and contended for, was to rescue the people from slavery, and acquire for them some hold in the system. A representation in one branch of the Legislature was all that they sought, and all that they obtained. I will not go into further details. From such a Government, what example is afforded, which we ought to imitate? It was during this struggle that our ancestors fled from persecution—and settled on this Continent, under charters from the Crown, which charters formed the connecting link between the Colonies and the parent country. In all these Colonial Governments, the power was in the people: the Governor was the agent of the King. His powers were limited. Every proposition originated with the people—there was a negative in the Crown. This was the only check upon their authority. There was no nobility or prince. The revolution transferred the whole power to the people. There were no privileged orders; nor was the Government hereditary. It consisted of a House of Burgesses, a Council, and a Governor. Every proposition originated with the people, under our Colonial Government; and, therefore, liberal and free principles were inculcated, which were made

perfect by our revolution. The whole Government, in all its branches, is now that of the people: every proposition may be said to originate from them; for, when checks on the most popular branch are provided, as by the Senate, for example, on the House of Delegates, they are formed by representatives of the people, and intended to give greater stability and permanence to their Government. Such a condition, therefore, as the rich and poor, and such a struggle between them, as overthrew the Government of Athens, and prostrated the power of the people, did not and does not exist here in the slightest degree. In the ancient Republics, and especially in that of Athens, the people possessed the whole power: the sovereignty and the Government were united in them: with us it is different. The sovereignty is in the people, but the exercise of Government is in their representatives. Every voter partakes a share of the sovereignty; and thus the Right of Suffrage is the basis of our system of Government. And hence the necessity for caution how we extend the right to such as have no permanent interest in the community. When we see that the representatives are so numerous, and that the voters constitute so great a mass, we have the certainty that they never can pass laws in favor of one class of society to the injury of another class.

Many reasons urge us in looking to self-government, to cause this Right of Suffrage to draw as near as possible every class in society together. But it should be connected with an interest in the soil. I wish to see no distinction, order, nor any thing like rank introduced amongst us. Let all be in the hands of the people. Let a majority rule. The laws of primogeniture and of entail are gone, and what is the tendency of such a state of things? The father brings up his sons, in his own principles and habits, and when he dies he divides his estate among them; or if he dies intestate, the law of descents comes in and divides it for him. His sons live without labour, and thus in two or three generations the largest estates become subdivided until the owners become reduced into one mass; and the whole aspect of society becomes nearly the same. Does not this present a reason why the Right of Suffrage should be connected in some degree with the soil? But let the test be made as moderate as it can be. Here we see none of those causes which overthrew the ancient Republics. The bases of our society are different from theirs. Our interests are more combined. The mass of the people are more connected with each other. Here are no great divisions of rich and poor existing distinct from each other, and engaged in perpetual conflicts. For these reasons, I should like to see the Right of Suffrage connected with the soil, but to an extent as moderate as circumstances will admit.

The question was then taken on Mr. Stanard's amendment, and decided in the negative—Ayes 41, Noes 44.

(Messrs. Madison, Monroe, and Marshall, voted in the affirmative.)

The question was then taken on Mr. Leigh's amendment, and decided in the negative—Ayes 37, Noes 51.

Aye—Mr. Monroe. *Noes*—Messrs. Madison and Marshall.

Mr. Cooke then offered the following amendment:

Strike out from the resolution of the Legislative Committee, all after the words "Resolved, that" and insert: "the election of all Executive, Legislative, or other functionaries, in this Commonwealth, whose election shall be submitted directly to the people, by the provisions of any new Constitution, or amendment of the old, to be framed by the Convention now assembled, shall be:

"All white male citizens of the United States, of the age of twenty-one years, or upwards, and resident in the county, city, borough or other electoral district, where they shall respectively offer to vote, at the time of any election; except

"That citizens of the United States, born in the United States, but without the limits of the Commonwealth, shall not enjoy the Right of Suffrage, unless they shall have resided therein for _____ years immediately preceding the election at which they shall respectively offer to vote; and _____ immediately preceding such election in the county, city, borough or other electoral district, where they shall respectively offer to vote: the mode of proving such residence to be prescribed by law:

"That naturalized citizens of the United States, shall not enjoy the right until, in addition to the qualification of residence required by the next preceding clause, they shall have respectively acquired by marriage, by descent or purchase, a freehold estate in land of the assessed value of _____ dollars, situated within the Commonwealth, (the title to which shall have been evidenced by a recorded deed, or will, and shall have been in possession of the same for the space of _____ before any election at which they shall respectively offer to vote; the mode of proving the previous residence required by this clause to be prescribed by law.)

"That no person shall exercise the Right of Suffrage at any election unless he shall have paid a State, county, or corporation tax, imposed on him by law, and legally demanded of him, during the two years immediately preceding such election: the mode of proving or disproving such payment, if disputed, to be prescribed by law.

"That no person convicted of any infamous offence, shall, at any election thereafter, enjoy or exercise the Right of Suffrage; the enumeration of such offences to be made by law.

"That the Right of Suffrage shall not be enjoyed or exercised, by any pauper—(the definition of the term pauper to be made by law :)

"By any person who shall have been declared, by a lawful tribunal, to be of unsound mind, during the continuance of such disability ; or,

"By any non-commissioned officer, or private soldier, seaman or marine, in the regular service of the United States, or of this Commonwealth."

(The preceding is the shape which Mr. Cooke's proposition assumed, after being modified by subsequent amendments.)

MR. COOKE said, that the Convention was now in the eighth week of its session, and had decided almost nothing. He added, that notwithstanding the ability with which the various subjects had been discussed, it was quite apparent that the Committee was absolutely surfeited with discussion and debate. It would ill become him, under such circumstances, to trespass on the time and patience of the Committee, by what was commonly called a "set speech." Nothing was farther from his purpose. Indeed, if the views comprehended in the amendment he had just offered on the subject of Suffrage, had been presented by any other member, he should have contented himself, after a discussion so protracted, with giving a silent vote in their support.

Under existing circumstances, he deemed it his duty to explain and support those views, but would endeavor to do it with as much brevity as possible. He hoped it would not be considered a departure from this plan of brevity, to make a few remarks on the two amendments yesterday proposed by the gentleman from Spottsylvania, (Mr. Stanard,) as he should in explaining the reasons which induced him to vote against both of the amendments alluded to, present at the same time the grounds of his preference for those which he had had the honour himself to submit.

The gentleman from Spottsylvania had proposed to extend the Right of Suffrage to

1st. "Every such citizen as shall be a lessee of a tenement of the yearly value of _____ dollars, for a term of _____ or more years, by a deed duly recorded three months before the time he may offer to vote, *and of which lease at least years shall be unexpired at the time he offers to vote.*" And

2d. "Every such citizen as shall, within one year before he may offer to vote, have *a tax or taxes to the amount of _____* assessed on property, whether real or personal, owned by him, and shall have actually paid such tax or taxes at least three months before he shall so offer to vote."

Now, Sir, said Mr. C., I am opposed to both of these modifications of the Right of Suffrage, because of the fluctuating and mutable character of the qualification they prescribe. I am opposed to the first, because it confers the right on a lessee in 1829, and deprives him of it in 1830. In 1829, his lease has two years to run, and he is a voter: he enjoys a share in the *sovereignty of the country*: in 1830, it has but one year to run, and he is disfranchised, and yet he is the same man—possesses the same moral and intellectual qualities—the same love of country—the same stake in the community—the same "evidence of permanent common interest with, and attachment to, the community"—in short, the same fitness to exercise the Right of Suffrage as in the preceding year. He has done no act to change his relation to the community in any respect, and yet he finds himself degraded from the rank of one of the sovereigns of the country, and a member of a disfranchised class. Sir, it ought to be borne in mind, that in forming a Constitution for the people of Virginia, we are not dealing with mere machines—with those "men of wood and brass and iron," to which the gentleman from Brooke (Mr. Campbell) the other day so forcibly alluded; but with sentient beings, whose feelings must be consulted and respected. And in this view I would ask, whether the free and high-spirited people of Virginia would submit, with patience, to a regulation so arbitrary and capricious in its character! Would not its enforcement produce disaffection, if not turmoil and confusion, in the class of persons subjected to its operation? I apprehend that such consequences would inevitably flow from the enforcement of a rule not only fluctuating, but in itself unjust and arbitrary.

The same principle of mutability pervades and vitiates the other qualification proposed by the gentleman from Spottsylvania. He proposes that the qualification shall consist in the payment of *a certain sum of money* to the Government, in the shape of an assessed tax on property, real or personal, owned by the voter, and that the right to vote shall *cease* when the tax shall be either abolished or reduced in amount below *that certain and specified sum*. There are, incident to this qualification, two principles of mutability or destruction, one *extrinsic*, the other *essential and inherent*. Although recommended as a part of the *fundamental law of the country*, which of course should not be changeable by ordinary legislation, it is liable to be destroyed, at any moment, by the whim, or caprice, or settled policy, if you please, of the Legislative bodies. And this too, on the colourable and popular pretext of diminishing the burthens of

the Government, by the abolition or reduction of the taxes. You put the tax, for example, the payment of which is to confer the right of voting, at twelve and one-half cents, and at the time of the adoption of the Constitution of which this provision forms a part, there happens to be a tax on horses of twelve and one half cents a head. A Legislature is chosen, in which there is found a majority of members, who honestly and deliberately think, that the poorer classes of the people cannot safely be entrusted with a participation in political power—that the good order, and well-being of the community, require them to be disfranchised. A Legislature composed of such materials, has only to abolish the tax on horses, and it disfranchises at once all those poorer citizens, who have beasts of the plough, but neither land nor slaves. And this, too, as I said before, on the popular pretext of diminishing the burthens of Government. Nay, Sir, the tax on horses, may become, in the course of events, wholly unnecessary; for, one of the great objects of our assembling here, is to reduce the expenses of Government, and dispense with as many taxes as possible. But by adopting the resolution in question, you would put it out of the power of the Government to perform one of the most beneficent functions of a Government, the diminution of the burthens of the people, without, by the same act, disfranchising a considerable part of them. Can a Constitutional provision, which involves such consequences, recommend itself to the good sense of the people of Virginia?

But I have said that there is, in the qualification which I am now considering, a principle of mutability *essential and inherent*. I alluded to the provision which makes the payment of *a certain fixed and unchangeable sum of money*, in the shape of taxes, the qualification of the voter. Now, Sir, it appears to me, that few things are more unsteady in their value than money, and that a worse standard could scarcely be found, by which to measure and apportion political power.

If we look back into the history of other ages, and nations, we shall find that, in England, the value of silver decreased between 1570 and 1640, seventy-five per centum. So that *forty shillings*, in 1640, would command no more labour, would purchase no more of the necessaries of life, than *ten shillings* in 1570.

We shall find that the perpetual rents, reserved in *money* some centuries ago, have become, by reason of its diminished value, a mere nominal incumbrance on the land in the hands of the tenant, while those retained in *corn*, have preserved their proper proportion to the fee simple value of the land: That in the same manner the *modus*, or commutation of tythes in *kind* for a fixed sum of *money*, payable annually, established by contracts, made some centuries ago, by the church, and the proprietors of particular tracts of land in England, has become a mere nominal incumbrance on land so situated.

But we need not resort, for instruction, to the history of remote ages or distant nations. We have seen, in our own times, and in our own country, a still more forcible illustration of the unsteadiness and mutability of that standard by which it is now proposed to measure political power, and distribute it among the people. Between the year 1812 and the year 1817 the dollar depreciated, in Virginia, sixty-six per cent. so that a dollar would command in 1817 no more labour and no more of the necessaries of life than thirty-three cents would command in 1812. But a still more striking illustration is seen in the fact, that since 1817 the dollar has risen in value *two hundred per cent.*—so that thirty-three cents, at present, will command as much labour, and as great a quantity of the necessaries of life, as one hundred would have commanded or purchased in 1817.

The scheme of qualifications which I have had the honour to submit, possesses at least, the negative merit of being free from these objectionable features. It will be perceived that the proposed amendment of, or substitute for, the resolution of the Select Committee, is founded on the assumption or postulate that all the free white male citizens in the Commonwealth of mature age, have, *prima facie*, a right to a voice in the Government. I shall not repeat the arguments by which this proposition has been sustained, in the discussions which have taken place on an analagous subject. I hope I may be allowed to express the opinion that those arguments have not been answered, and the belief that they are unanswerable.

But those who believe in the original universality of this right, insist, at the same time, for reasons which have been given again and again, that the majority of the male adults, or members of the community, have a right to adopt and enforce a fundamental law, by which certain classes or descriptions of persons shall be excluded from the exercise of the right. That the majority have a right to say that the good order, well-being and safety of the community, require such exclusion. In conformity with this view of the subject, I have submitted to the Committee, a series of disqualifications, to which I now beg leave, with the utmost brevity, to call its attention.

The first disqualification includes all citizens born in the United States, but without the limits of the Commonwealth, until they shall have manifested, by a residence of some duration, an intention to reside permanently among us; until they shall have afforded by residence at least, evidence of "permanent common interest with, and

attachment to, the community." This disqualification attaches great, and I think deserved importance, to the feeling of love for the natal soil. I shall not attempt, Sir, to *prove* to this Assembly, *that men love their country*.

The second disqualification is but another exemplification of the same principle. It supposes that foreigners, though naturalized, want the *attachment of the heart* which is felt by the natives of the country, and should be required to bind themselves to the community by the acquisition of *land*—by the factitious tie of *interest*, before they shall be admitted to a share of the sovereign power.

Passing by the disqualification of persons convicted of infamous offences, because they have shewn by their conduct, that they are not merely indifferent, but hostile to the community in which they live—of persons of unsound mind, because of their incapacity to exercise the right—of paupers, because of their dependent condition, and consequent want of free agency, and of their want of interest in the well-being of a community in which they have no stake, I ask the attention of the Committee to the only one which remains.

It is that which denies the Right of Suffrage to those who neglect or refuse to pay to the Government or the local authorities, the taxes and levies imposed on them by law. I confess, Sir, that I attach to this disqualification, great practical importance. I need not tell those whom I address, that there are many citizens in this Commonwealth, and I fear, not a few freeholders, who are regularly returned delinquent by the collecting officers, and whose delinquency arises not so much from their want of ability to pay, as from their utter worthlessness. Where the public contributions are so light and trifling in amount as those demanded by our Government, it may be safely assumed as a *general principle*, that those who do not pay them, are idle and worthless. And, *in fact*, the class of delinquents *includes* a great proportion of the habitual drunkards and idle vagabonds who are a dead weight, and worse than a dead weight, on the country which supports them. The practical effect of this disqualification, then, is to deny political power to those who constitute, in fact, "the rabble" of this and every country.

In this exposition of my views, Mr. Chairman, I have been studiously brief; and I regret that a sense of duty has compelled me to trespass, even as long as I have, on the valuable time of the Committee.

MR. P. P. BARBOUR then addressed the Committee in nearly the following terms:

I shall certainly emulate the example set me by the gentleman from Frederick (Mr. Cooke) in brevity at least. I have no idea of going into any set speech; I am satisfied the temper of the Committee is not now such as to endure it, if it has been at any time. As I am most decidedly opposed to the whole scheme, I shall vote under an utterly different view of it from that which has been taken by the gentleman; and since he has seen proper to impute very grave charges to those who insist that the Right of Suffrage shall be connected with the soil, I shall present to the Committee, and to the public, two or three of the reasons which influence the vote I shall give.

I throw out, in the mean while, as a mere suggestion to the gentleman from Frederick, the enquiry, whether his resolutions will not conflict with some of the provisions in the Constitution of the United States? I do not say that I have formed any clear opinion as to this bearing of the subject, but I throw out the enquiry, as one that may be worthy of consideration. One of the articles of the Constitution declares, "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

How far the distinction which the gentleman proposes to make between the rights of citizens of Virginia and those of the citizens of sister States, consists with the observance of this Constitutional principle, presents a subject for enquiry: but to the question before us.

We have been engaged in discussing the enquiry, in what proportion power shall be divided, among the body politic? and the question now before us is, of whom does this body politic consist? who constitute the body politic of the State of Virginia? It is hardly necessary to enter on the enquiry now as to the power of this body to declare, who shall, and who shall not, exercise the Right of Suffrage. All agree that we possess such power, in its utmost latitude; the only limitation upon its exercise is the consideration, what is just? what is proper?

My purpose is to put, if possible, the vessel of State at a sure anchorage; such as shall enable her to outride the political storms, which all history combines to prove, will ever continue to agitate the great ocean of human affairs. My purpose is to lay the foundations of the Government on a permanent basis, such as shall endure the shocks of time. I wish to sanction no unjust exclusion of any portion of the community. I seek to divide the State into no *castes* or classes. God forbid! Such a design was utterly incompatible with the spirit of the Constitution: but I want to establish sound and equitable criteria to determine who shall, and who shall not, enjoy the elective franchise, and thereby exercise a control in the Government.

Is not some landed qualification the best surety for such a permanent interest in the community as justly entitles any citizen to the exercise of this right? In answer to

this inquiry, I might derive an argument from the gentleman from Frederick himself: for, when he comes to provide for the exercise of the right by aliens, he himself proposes to exact a landed qualification, as the only adequate security. He then thinks the soil presents the only solid foundation: that a right in the soil presents the best and surest evidence of a permanent common interest with, and attachment to, the community, none will dispute. Other things may indicate an interest in the community, but whether they indicate that degree of permanency in that interest which is required by the Bill of Rights, may well admit of dispute. The distinction between any and every other qualification, and that derived from an interest in the soil, is as broad as the Ecliptic. As to all other property, it is transient and perishable in its nature: it has no local habitation, and scarce a name. It is with us to-day, it is with another to-morrow. It pertains not to one person, or to one State, but may be said to belong to the Universe at large. Does the immense personal wealth of Stephen Girard belong to the State of Pennsylvania? No, Sir. It may be at New York to-day, and at Charleston to-morrow. Permanence is an attribute which has nothing to do with personal property. It belongs to landed property alone. Landed estate has another advantage: it is visible, tangible, immovable; the man who owns personal property *may* be benefitted or injured by the operations of your Government, but the man who owns the soil, *must* be benefitted or injured by them. If called to regulate the affairs of your household (and the principles of right reason which apply to a household, apply in their degree to the body politic.) would you invite those who sojourn upon your estate for a week or a month, or would you ask such as were members of your household, and were personally connected with the interests of your farm? While I am disposed, like the gentleman from Loudoun, (Mr. Monroe,) to adhere to the soil, I am willing to go to every reasonable length in extending the Right of Suffrage under that sole modification. I would not confine it to freeholders alone: I would go to the reversioner, and to the lessee: all I ask is for some indication from an interest in the soil, that the voter has some sort of permanent interest in the well-being and the fortunes of the Commonwealth.

The gentleman from Frederick objects to admit the lessee on the ground that his lease is to be valued, and that that value is mutable.

[Here Mr. Cooke rose to explain. He said the gentleman from Orange had slightly misapprehended his meaning. He had objected to the clause respecting the lessee, because it gave the Right of Suffrage to such lessee so long as his lease had yet a certain time to run, and then took it away from him, when the period for which he held it approached within a certain distance of its termination. If it was just to confer the Right of Suffrage on the ground of the lease, it certainly was unjust to take it away from the lessee until the lease was expired.]

Mr. Barbour replied, that he had understood that to be one ground of the gentleman's objection, and he would now proceed to answer it. Did not the gentleman perceive that his argument turned in a circle? that it immediately recoiled upon him? Did he not see that the argument in its utmost extent might be turned against himself? Did not the gentleman himself lay down requirements which extended retrospectively from the period of voting? and according to which a man who voted last year, would be deprived of the right of voting this? and so the Right of Suffrage would be as unsettled as a pendulum? Let him look at his own resolutions; certain classes of persons must have dwelt for two years within the county before they were admitted to vote: so, that one year before the election they would lose that privilege. In other parts of the resolutions, voters were required to have paid taxes for a certain time previous to voting: the same objection applied in that case. Take the case of the freeholder: while he continued to own the land, he was permitted to vote, but the moment it passed out of his possession, the privilege went with it. The same objection applied to the case of the minor, who could vote this year, though he could not last. The gentleman must certainly abandon this argument.

But, I am told that to insist upon connecting the Right of Suffrage, with an interest in the soil, is aristocracy; rank aristocracy. Sir, this is a grave charge, and I shall certainly be the last to advocate any measure, against which such a charge will justly lie. The gentleman from Chesterfield, presented to the Convention, some happy illustrations on this term aristocracy. According to the idea he so forcibly illustrated, if you are about to make an aristocracy, you must create a certain class in the community, distinguished from the rest by privileges and immunities, which are not only peculiar to them, but which continue to be theirs, under all changes of circumstances: which adhere to their persons and cannot be separated from them. Thus, the House of Lords in Great Britain, are a class of persons separate and distinct from all other subjects, with privileges, which they possess by hereditary descent, except a few, who, from time to time are added to the class by patent from the Crown. The aristocracy of a country all belong to a distinct class, and must remain distinct and separate, *ad indefinitum*. How can a term, which designates such a class as this, be applied in this country to freeholders, who derive the power to vote, from owning a

portion in the soil? Must a man who owns a freehold to-day, own it forever? Does not this interest in the soil pass from hand to hand? is it not actually changing every day and hour? Besides all the mutations which it suffers from buying and selling, it is exposed to another and a more serious cause of change; that which arises from its partition among the descendants of those who possess it. This operation is continually widening the foundation on which freehold Suffrage rests. Thus the dreaded aristocracy is a matter of bargain and sale, and the moment any man purchases the land of his neighbour, behold! a new aristocrat! What propriety can there be in applying the term aristocracy to a body of individuals, whose claim to power is based on a foundation as fluctuating as the waves of the ocean? a body of men, into which, a man may enter to-day, and out of which he may pass again to-morrow? To make the two cases alike, it should first be shewn, that the aristocracy in England can sell at pleasure their patents of nobility, and that any commoner may become a noble, who is rich enough to pay the market price. But every body knows, that no man in England can enter this privileged order, but by the sovereign pleasure of the King, and that a man who has once been admitted, cannot lose his privileges, but by a process of law. Has the Committee, asked Mr. B., turned its attention to our law-parcenary? Here is an individual who owns ten thousand acres of land; he has a family of six children; the first descent divides this tract into six parts. Suppose each of his children should have as many children as his father had, then the second descent divides the tract into thirty-six parts; and on the same principle, a third descent would break it down into two hundred and sixteen portions. Where then is the danger of a landed aristocracy? when but the third link in the chain of descent breaks up by a mere operation of law, the largest estate, into portions, too small to support a family? Unless with every new apportionment, there is bequeathed such an energy of character, as enables each descendant to add largely to his patrimony, the posterity of the most formidable aristocrat must inevitably come to poverty. Of the truth of which assertion, the past history and present condition of Virginia will furnish abundant proof to every man. The territory of the State contains about sixty-five thousand square miles, each mile containing six hundred and forty acres of land. A process of arithmetic will speedily show, that there is soil enough in Virginia, to give a fifty acre freehold to one hundred and thirty thousand persons, after first supplying every man, woman, and child in the State. Yet, gentlemen are alarmed at the prospect of a landed aristocracy. So far is the community from such a danger, that to base the Right of Suffrage on a landed qualification, (considering the area of the State, the ease of transmutation, and the inevitable effect of partition,) is to place that privilege on a basis perpetually extending, and to make it the property of no man or set of men. Such a provision does not confine the right of voting to merchants, to farmers, or to professional men; it gives it to whoever may hold the land; to whoever may purchase the land; and, who is disposed to gratify his ambition to be an aristocrat, at the small expense required to possess himself of a freehold. It places the elective franchise within the reach of every man in the community, who possesses ordinary industry and economy. From such an arrangement, no danger can arise to the liberties of the people.

This danger being removed, I ask, whether the possession of land will not be confessed, to furnish the best evidence of a man's permanent interest in the well being of the community. Every man who has remained for any length of time in the Commonwealth, without possessing himself of some interest in its soil, gives reason to doubt whether he intends to stay among us, and whether he is disposed to identify his interest with ours. It is so very easy to acquire sufficient land to entitle a man to vote, and the privilege of voting is in its nature so far beyond all price, that the presumption is a fair one, that he, who acquires no freehold, either underrates that privilege, or does not mean to become permanently a citizen among us. But, we are told that under the present Constitution, many valuable citizens of great talents and virtue, are excluded from the polls. It may be so; but what line can possibly be drawn, which will not leave excluded some angles of the State? No regulation can be adopted, under which some cases of hardship will not possibly occur. Is it not a hard case, that a young man, who lacks twenty-four hours of being of age, should be deprived of the privilege of voting, for the want of those twenty-four hours, especially if he be something of a precocious and forward youth? Such an argument will not do, unless gentlemen can shew it to be possible for imperfect and fallible men, to make rules which shall be beyond all imperfection: to shew, that the rule we propose, will be attended with some inconvenience, is only to shew, that our rule is human, and is like all other rules, that have men for their authors. As to the case of those citizens, who own such vast amounts of personal property, as have been represented by gentlemen, and whose exclusion from the polls has drawn forth so much commiseration, if, with all their wealth, they are unwilling to purchase one poor fifty acre tract of land, their case certainly receives little commiseration of mine: their exclusion is their own fault, their thousands remain intangible to our taxation, and if they will not subject the

price of one poor freehold, to the reach of the Government, they deserve to have neither part nor lot in its control.

MR. LEIGH next addressed the Committee. According to my understanding of the resolutions now moved by the gentleman from Frederick, a man who has never been assessed with a tax of any sort, is to be allowed to vote; but the man who has been assessed with a tax, and has not paid it, is to be excluded from the polls! It comes then to this, that those "drunken vagabonds," against whom the gentleman manifests so earnest a zeal, are only to be excluded, if they chance to have property enough on which to be assessed; but such vagabonds as have no property, and whom no man would ever think of taxing, are the peculiar objects of his favour. They must have a right to vote. If I had used such a phrase, it would doubtless, have been attributed to my aristocratical prejudices; it would immediately have been imputed to my political creed. But I submit to the Committee, whether a man who has some property and some means of subsistence, or a man who has none at all, is more likely to be a "vagabond," and to belong to "the rabble;" yes, Sir, to "the rabble." It is a proper phrase, and it is a phrase too, used by a gentleman on the other side. Mr. Chairman, I do not contend that the possession of property is a security against vice. I know better, and sorry I am that I do; but this I say, if you look at the state of mankind with a view to determine who is the most likely to become base and underserving; to become drunken vagabonds, and a part of the rabble, you will be constrained to confess, that those who have some property, are at least more apt to be virtuous, than those who have none. You will be almost sure to find, among those without property, no industry and no economy; and if you then look to those who exhibit the greatest degree of vice, you will find them to consist of persons precisely of this description. I throw out these objections to the details of the gentleman's plan, that it may the better be compared with the amendment I proposed. It is hardly to be imagined, that the gentleman seriously intends such consequences to result from his measure. I shall not attempt to enter on the question of a landed qualification as the basis for the elective franchise. On that subject hope is winged, and ready to take its departure. I feel it dying in my heart. This very morning, I heard the venerable gentleman from Loudoun, (Mr. Monroe,) insist on connecting that privilege with the soil, and I then saw him vote in favour of a proposition of the gentleman from Spottsylvania, the object of which was to dispense with all landed qualification whatever. After this I can hope for nothing more; far less, can I expect that my shoulders will be broad enough to sustain the weight of such a cause. I consider that question as at an end. Whether I shall ever revive, depends upon circumstances; but I never shall abandon it, while one scintilla of hope is left me.

There is one consideration, which I consider of much more importance, than the question of freehold qualification: whether the voter is to possess a freehold or not, is comparatively of little consequence. But gentlemen insist, that every form of a landed qualification, amounts to an exclusion of all who do not possess it, and they argue on a similar assumption as to all other qualifications. Sir, this is no exclusion whatever, of any man, who, according to the gentlemen themselves, would be entitled to vote; (for, they themselves advocate a permanent exclusion of all females and coloured persons.) When gentlemen talk of the exclusion of any free white man, from the privilege of voting, I am at a loss to understand their meaning. Is there a free white man in all Virginia, who may not obtain the right to vote? If he has his health, and is industrious, he may compass enough to purchase ten or twenty, or even fifty acres of land, which is the most that any one thinks of requiring as a freehold. Who then is excluded? Those only, who are too lazy to earn, or who do not think proper to acquire it. There is not a man who may not acquire even the qualification demanded by the existing Constitution. He may possess it at pleasure, if he is an industrious man. Far less is he prevented from acquiring the reduced qualification, which is proposed to be acquired by the new Constitution.

Mr. Chairman,—I do not agree in the position, that no man who is not qualified to vote for members of the General Assembly, is not a member of the body politic. I insist, that the wife and the daughters of such voter, are members of the body politic. They are not the slaves of their husbands or their fathers; they are free-born citizens of this Commonwealth. God forbid they should be otherwise! It is not a necessary qualification of a citizen that he should be entitled to vote; it would be most absurd to exclude from the privilege of citizenship, every female, and every minor in the community.

We hear gentlemen on the other side constantly speaking of the Right of Suffrage, as being of inestimable value; the dearest right of freemen; dear as life itself, &c. I have heard this language all my life, and I once thought, (it was when I was fresh from school,) that I understood it; but latterly I have ceased to understand it, and I cannot recall the ideas I once had on this subject. It is certainly a most invaluable privilege to live under a Government freely elected by the most virtuous portion of the community; to live under rulers, who can pass no act injurious to me, that will not

be equally injurious to themselves, and more so. But, is the privilege that I individually should vote for them an invaluable privilege, when I can purchase it for fifty dollars? I ask gentlemen to reflect upon this view of the subject. When a young man is twenty years old and six months, is this privilege a whit less inestimable, than after he is of age? But I go farther, and I ask, is the blessing of Republican Government confined to the *men* who live under it? does it not belong to the women also? do they not enjoy the free benefit of it? The enjoyment of the inestimable blessing does not then depend on our exercising the Right of Suffrage, but it consists in this, that those govern, who themselves hold property, and that they cannot injure others, without in the same degree injuring themselves; that those govern the community who feed, clothe, and educate the whole community, and pay all its burdens. This is the privilege, and it is a privilege indeed. Does any man believe, I consider it an invaluable privilege to vote for a member of the General Assembly? Without the least disrespect for that body, I may say, that I consider this, as a matter of no moment. I do not regard him alone as my Representative. I put my confidence in the great body of the Legislature as a whole; as the body which in its collective capacity protects my rights and gives me my share of the general liberty and safety. The only benefit they are to me, consists in this; that they protect all the happiness which I succeed in carving out for myself. But according to the doctrine of the invaluable privilege, unless I vote, I enjoy no share in the political sovereignty of the community. Now, if I vote against a candidate who succeeds in his election, I am worse off than if I had not voted, because I see others share in the Government, in direct contradiction to my wishes and efforts. I wish in conclusion, distinctly to say, that the advantage I derive from a free Government consists in this, that the Government is administered by those who have a common interest with me, and that I cannot be injured unless others are, and among those, the rulers themselves. If I am protected, that is all I desire. Mr. L. concluded by expressing his conviction, that to insist upon a landed qualification for the Right of Suffrage, involved no exclusion of any man; established no order of nobility, but was simply a provision, that those who were in general the most fit to rule should exercise the powers of Government.

Mr. Stanard said that he should reply to Mr. Cooke's criticism on his amendment, if this was the proper time to do it; but the amendment having been rejected, could not now be discussed.

Mr. Monroe now explained,—I feel it incumbent on me to give an explanation of the ground on which I gave the vote that has been remarked upon by my very worthy friend from Chesterfield, for whom I feel great respect and regard. I am for adhering to an interest in the territory. I am for providing some tie which shall connect the voter with the soil. Perhaps I did not distinctly understand the proposition of my friend from Spottsylvania, but I viewed it in this light; that the person who had been assessed to a certain amount which was left blank, and who had paid his assessment, should be admitted to vote. My idea was, that if he was taxed, he must of course be a resident: and if taxed to the extent which I expected, (and it was my view that the tax should be made to exceed the value of a freehold or a lease,) it would enjoin upon him an obligation to purchase or lease real property. I had no idea of abandoning a hold upon the land, not in the least. The proposition is still before the House, and after all the amendments should have been proposed and passed upon, the result of the whole proposition would still be in our power. It was my purpose to take a deliberate view of the proposition as it should appear in its last stage, and then to vote for or against it as my best judgment should dictate. I never meant to abandon some hold upon the land, but to give security by it to our system of Government. I am for giving permanence, if possible, to a system of self-government. But you go afloat, the moment you put the Right of Suffrage in the hands of a transient population. You can have no security. Go to Great Britain, I name that country because its history and condition are most acceptable and best known by us. Put the Government there in the hands of the people; and they would immediately behead the King and cut off the heads of the Nobility, and throw every thing into confusion: the reason is, they are incompetent to self-government. But we are competent. We are altogether in a different situation. The general diffusion of knowledge among our people inspires me with the strongest confidence in the success of our system. Still, let us be on our guard as to the exercise of the Right of Suffrage, on which the sovereignty rests, which is in the people.

All the officers of the Government, though many of them are not elected immediately by the people, are their Representatives, since they derive their appointments from the people, by the agency of those whom the people do elect. My object is to connect the Right of Suffrage with the territory.

The Chair now said that the remarks of Mr. Cooke on the amendment of Mr. Stanard had been permitted, not as a discussion of that amendment after it had been rejected, but as a part of his argument intended to bear on his own amendment.

Mr. Leigh gave an assurance of his personal regard and respect for Mr. Monroe, and expressed his satisfaction at learning that he still adhered to a landed qualification for voters.

He then urged this farther objection to Mr. Cooke's amendment; that its effect would be to give the elective franchise to persons like some in Richmond and Petersburg, who were the mere factors for the manufacturing houses of the North, and who had not only no common interest with the people of Virginia, but an interest directly hostile to theirs. It would admit every man who owns a horse: and there were numbers in his own county who owned nothing else, living by charity on the lands of others and wholly devoted to their will in every thing that was not directly dishonest. All these would give the votes not of themselves, but of their benefactors.

Mr. Campbell in reply to Mr. Monroe, referred to the fact that in twelve States of the Union, nothing more is required of a voter than residence and the payment of taxes. No condition of the ancient Governments had been analogous to this, and therefore their downfall was no warning against it. As to the case of procuring a freehold, no man with due respect to himself and his rights, would stoop to purchase what he had a right to demand.

Mr. Cooke replied to Mr. Leigh, whose criticism he thought more witty than candid. He wished to sweep off all, who from moral degradation, were incapable of an upright and proper exercise of the elective franchise. His amendment would not admit vagabonds without any property, while it admitted vagabonds who nominally had some; because it excluded all who did not comply with county levies; now the rabble of whom Mr. Leigh had spoken, were all included in the poll-tax; and if returned delinquent, all these would be excluded.

In reply to Mr. Barbour, he thought there was a distinction between the word "rights" and the terms "privileges and immunities." The elective franchise was included in the former term, but not in the latter; and, therefore, the amendment would not contradict the Constitution of the United States.

Mr. Leigh observed that Mr. Cooke had said, and repeated three times that which he had said was more witty than *candid*. He desired that Mr. Cooke would have the goodness to recall that word *uncandid*.

Mr. Cooke was about to reply, when the Chairman interposed, and remarked that he had not understood Mr. Cooke as imputing any intentional misrepresentation to Mr. Leigh, otherwise he should have stopped him.

Mr. Leigh repeated his call on Mr. Cooke, to recall the word.

Mr. Cooke said, that he had not the slightest objection to saying, with the utmost frankness, what was precisely the fact, that he had not imputed, or intended to impute, to Mr. Leigh, any intentional misrepresentation. He added, that he wondered greatly at the excitability manifested by Mr. Leigh, since nothing that he had said could be fairly construed into an intention on his part, to wound Mr. Leigh's feelings; which, in fact, he had not the remotest idea of doing. That he meant nothing more than that Mr. Leigh's remarks, made in the ardour of debate, had, in their effect, presented an unfair view of his (Mr. Cooke's) proposition. Deliberate or intentional unfairness, he had not imputed to him.

Mr. Leigh said, that, personally, he was satisfied. But he had appealed to Mr. Cooke in the course of his remarks to say, whether the interpretation put by him (Mr. Leigh) on his (Mr. Cooke's) proposition was not correct; to which Mr. Cooke had nodded assent. After that he thought it was rather singular, that Mr. Cooke should impute to his argument any want of candour.

Mr. Cooke replied, that the proposition which his assent to, or dissent from, was asked by Mr. Leigh, was simply this—that Mr. Cooke's scheme of qualification, admitted persons to vote who had no taxable property, and excluded from Suffrage those who had taxable property, and failed to pay the taxes assessed on it. To the correctness of that construction of his proposition, Mr. C. had nodded assent.

Mr. Doddridge now objected to that part of Mr. Cooke's amendment, which had relation to aliens; he moved to strike out that clause. He briefly explained his objections to it, as going farther than the laws relating to aliens go, respecting real estate.

Mr. Cooke modified his amendment, by inserting the words, "if acquired by purchase"—(requiring the deed to be recorded, when the freehold was acquired by purchase.)

Mr. Joynes expressed an objection to Mr. Cooke's amendment, as going to admit the poorest man in the county, while the richest might be excluded, if the poll-tax should ever be repeated.

The question being put on striking out, it passed in the negative, without a count.

Mr. Coalter, after an apology, referring to his recent occupation of a seat, expressed his opposition to cutting down the venerable tree planted by our forefathers and planting another in its stead; he would endeavour to strike one blow for Virginia, and bear down on the enemy; by whom he meant the passions and prejudices of members, his own included. To pluck up the tree, would be the sin of *man*

only; for Eve, looked on with deep anxiety clutching her child to her bosom. He expressed his decided approbation of the present form of Government, as the best in the world, under which the people had lived contented and happy. He reflected on the injustice of the friends of Internal Improvement laying the burden on those who had no personal interest in the object, and imposing a lasting mortgage on the lands of the State.

Mr. Campbell thought the gentleman's alarm about the axe imaginary; it was only a pruning knife to lop off a few aristocratical branches.

Mr. Cooke farther modified his amendment at the suggestion of Mr. Joynes, so as to include any State, county, or corporation tax.

In this form the question was taken upon its adoption and negatived.—Ayes 43, Noes 49.

Mr. Doddridge now moved the amendment he had referred to on Saturday, and which is in these words:

“And shall be extended to every free white male citizen, aged twenty-one years or upwards; who shall have resided at least two years in the county, city, borough, or district, in which he shall offer to vote, immediately preceding the time of voting, and who, during that period, shall have actually paid a revenue tax legally assessed; and to every free white male citizen, aged twenty-one years or upwards, who shall have actually resided, at least two years in the county, city, borough or district, where he offers to vote, and who, for the period of six months at least, shall have been an house-keeper therein, and shall actually have paid a State, county, or corporation tax.”

Mr. Mercer wished to know why Mr. D. desired to strike out the first and second class of persons included in the resolution of the Legislative Committee?

Mr. Doddridge replied, because the generality of his proposition covered them all, provided they paid taxes.

Mr. Mercer stated that he could not vote for the proposition. The gentleman from Brooke himself had agreed that all who now have the Right of Suffrage should retain it. Was it his object to make the right to vote to depend on the payment of a tax? In eight States of the Union there is no tax whatever imposed. Even within sight of this Capitol, there is a gentleman who has an estate worth twenty-five thousand dollars, but who has no right to vote because there is no tax imposed on his property. Why were such persons to be excluded? He was in favor of comprehending all those whom that gentleman intended to include; but he would not vote to exclude those who held by exactly the same tenure, but who were denied the right to vote because they were not taxed. The gentleman from Brooke himself, insisted that there should be a sufficient evidence of permanent common interest. He moved to amend the proposition to amend, by inserting the amendment in the fourteenth line, after the word “dollars”—the effect would be to leave the first and second classes untouched.

The Chair decided that the amendment was not in order; but

Mr. Doddridge having accepted the proposition, modified his amendment accordingly.

Mr. Joynes moved to amend the amendment by adding the words “and who shall have actually paid a State, corporation, or county tax.”

Mr. Doddridge accepted the amendment as a modification of his amendment.

Mr. Mason asked for a division of the question; and,

The question was then taken on striking out, which, after an unsuccessful motion by Mr. Henderson, that for the sake of accuracy the names of members should be called over, was decided in the affirmative.

The question was then taken on inserting the words moved by Mr. Doddridge, and decided in the negative.—Ayes 44, Noes 48.

Mr. Mercer then moved to fill the blank occasioned by striking out, with the fourth class of persons included in the report of the Legislative Committee, in the following words:

“Or who for twelve months next preceding has been a house-keeper, and head of a family within the county, borough, or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same.”

Mr. Mercer said, he would not presume to violate the rule which had been laid down by others, of abstaining from going into the merits of the general question. There was one view which he wished to take: while gentlemen on one side represent the acquisition of the Right of Suffrage as to be gained with the greatest facility, they seemed to attach the greatest importance to the exclusion of others from its exercise. If it were so easy to acquire a qualification, and it was of such importance, why could not faction purchase the freehold? According to the gentleman from Orange, (Mr. P. P. Barbour,) the multiplication of the square miles in the State by the acres, gave sufficient quantity of land to every individual in the State, and left a considerable surplus. He computed that putting the value of the freehold, as estimated by gentlemen, it

preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough, or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated."

The Committee then rose and the House adjourned.

TUESDAY, NOVEMBER 24, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Douglass, of the Presbyterian Church.

The House then resolved itself into a Committee of the Whole, Mr. Powell in the Chair, and the question being on the third resolution reported to the Convention by the Legislative Committee, viz:

"Resolved, That the Right of Suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution: and shall be extended, 1st, to every free white male citizen of the Commonwealth resident therein, above the age of twenty-one years, who owns, and has possessed for six months, or who has acquired by marriage, descent, or devise, a freehold estate, assessed to the value of not less than dollars for the payment of taxes, if such assessment shall be required by law: 2d, or who shall own a vested estate in fee, in remainder, or reversion, in land, the assessed value of which shall be dollars: 3d, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: Provided, nevertheless, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor or marine, in the service of the United States, nor by any person convicted of any infamous offence; nor by citizens born without the Commonwealth, unless they shall have resided therein for five years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated."

Mr. Summers of Kanawha, offered the following amendment, (applying to the third class of voters added) being the same he had offered in the Legislative Committee, with a slight modification, substituting occupancy for possession:

"Or who shall own and be himself in actual occupation of a lease-hold estate, with the evidence of title recorded, of a term originally not less than five years, and one of which shall be unexpired, of the annual value or rent of dollars."

The amendment was very briefly explained by the mover, and supported by Mr. Claytor.

At the suggestion of Mr. Leigh,

Mr. Summers farther modified his amendment, so as to confine the occupancy to the *term* himself, and not extend it to his tenant.

Mr. Henderson of Loudoun, moved to amend the amendment, by striking out after the words "of a term originally not less than five years," the words which immediately follow, viz: "*and one of which shall be unexpired.*"

The motion prevailed, Ayes 48—(Mr. Marshall was observed to vote for it. Mr. Madison and Mr. Monroe against it.) So the words requiring one year of the lease to remain unexpired, were stricken out.

Mr. Leigh moved to strike out the word "five" (in the original length of the lease) with a view to insert a longer period.

This motion was supported by Mr. Doddridge, as tending to benefit the tenure of lease-hold property, by encouraging long leases.

Mr. Johnson wished first to know how the blank was to be filled.

Mr. Leigh said, he meant to insert ten, instead of five years.

Mr. Claytor said, he should then move to fill the blank with three instead of five.

Mr. Leigh then varied his motion, so as to strike out, and insert *ten*. The motion was negatived.

Mr. Claytor moved to strike out five and insert three.

Mr. Scott called for a division of the question; and then the question being put on striking out five, it was negatived.

So the term of *five years* as the original length of the lease, was left unaltered.

Mr. Tyler asked, and obtained a re-consideration of the motion to strike out the unexpired term of one year; but the vote being again taken, the striking out was again carried—Ayes 45, Noes 44.

Mr. Wilson moved to amend the amendment of Mr. Summers, by striking out the words (in respect to the lease) "*of the annual value or rent of* *dollars.*"

But the motion was negatived.

The question was then put on Mr. Summers's amendment as amended, and *carried* by a large majority.

Mr. Leigh now moved to amend, by inserting after the word "year," (in reference to the payment of a part of the revenue within the preceding year) the words "*to the amount of* *...*" But the motion was negatived—Ayes 43, Noes 44.

Mr. Stanard then moved to insert, (in the same place, and in reference to the same subject, namely, the tax paid,) the words "*by a tax on property owned by him.*"

Mr. Mercer explained the effect of this amendment to be, to exclude the tenant who pays a tax on his house, the merchant who pays a tax on his licence, or a slave-employer on the slaves he hires.

Mr. Stanard thought differently: when the tenant paid the tax, it formed a part of the rent. The amendment would exclude mountebanks, pedlars, &c. Those who had not some little modicum of property hung loosely on society.

Mr. Moore opposed the amendment, as leading to disputes at elections, and afterward as to the votes to be admitted.

Mr. Green said, the resolution as it stood, would give the Right of Suffrage to every man who sues out a writ, with or without cause of action, for there is a tax on all writs.

The amendment of Mr. Stanard was negatived—Ayes 41, Noes 48.

(Messrs. Madison, Monroe and Marshall, against it.)

Mr. Stanard, (to avoid disputes about votes,) varied his amendment, so as to read, "*by a tax on property charged to him on the Commissioners' books.*"

Mr. S. explained his object to be, to exclude all who paid tax on their profession or trade merely. It was unfair that the mechanic, who sells the work of his own hands, should be excluded, and the merchant, who sells foreign goods, admitted to vote.

Mr. Mercer said, of all books, printed or in MS., the Commissioners' books were the most inaccurate. Besides, this would be fixing the Right of Suffrage on a variable mode of taxation, liable to continual change.

Mr. Leigh had never heard the Commissioners' books charged with inaccuracy before. As to the tax on merchants' licenses, it was not the merchant who paid them, but the consumers.

Mr. Mercer replied, that he had known the same tract of land to be charged *three times* over, on the Commissioner's book, and *never* to its right owner in either case. Many merchants would be glad if the fact was as stated by Mr. S., and lawyers too.

The question was taken on Mr. Stanard's amendment, and the votes stood—Ayes 47, Noes 46.

(Messrs. Madison and Marshall for it, Mr. Monroe against it.)

The Chair voting in the negative, produced a tie; and of course the motion was lost.

Mr. Summers, after expressing his satisfaction that there was now, as he hoped, a *final end to the freehold Right of Suffrage in Virginia*, moved the following amendment:

"Or who having resided two years in the county, city, town or election district, should have been assessed with, and paid to the Commonwealth any part of the revenue of the preceding year."

The amendment was to be inserted immediately before the proviso.

Mr. Stanard enquired whether this was not, in substance, the same provision, which had been three times rejected already?

The Chair thereupon compared the present amendment with all those which had been rejected; and then announced, that though this proposition had been rejected, it had always, heretofore, been *in connexion* with some other proposition, and had never, until now, been presented specifically, and alone; it was therefore in order.

Mr. Johnson strongly objected to this amendment, as going in effect to put the extent of the Right of Suffrage, within the control, and at the discretion of the Legislature: who, by increasing or diminishing the taxes, could enlarge or lessen the number of voters at pleasure. A tax of one cent a head would at any time introduce *Universal Suffrage*.

MR. RANDOLPH then rose and addressed the Committee, nearly as follows:

As one of not the least zealous of those who wish (in company with the gentleman who stands at the head of the delegation from Loudoun, and presides over this Convention, the benefit of whose vote I trust we shall have when we come into the House,) to restrain the Right of Suffrage to the possession of *land*, I feel almost indifferent whether this amendment shall prevail or not. I will go farther, and say, that if the proposition, written in sport, by my old friend and fellow-labourer, who sits behind me (Mr. Garnett,) and which gives the Right of Suffrage to every free white man who has been twenty-four hours within the bounds of an election district, should be offered by him, I do not know, if I should have any great objection to that proposition.

But I will say, with the most perfect sincerity, that I had rather this Committee should rise, after having adopted a resolution committing the whole powers of the State, Legislative, Executive, and Judicial, to the Legislature of Virginia, than that any of the propositions inserted in the third resolution of the Legislative Committee, should become a part of the Constitution. I believe it would be safer to trust solely to the discretion of the Legislature, than to adopt these propositions; for, we should then at least rest upon the good sense of the people. Sir, I put it to every gentleman who hears me, whether it would not be safer to give the Legislature a *carte blanche*, and make them as omnipotent as the Parliament of Great Britain, rather than to give them these propositions as the fundamental law by which they are to be bound. I have said, and I will now repeat it, that if the first resolution in the report of the Legislative Committee shall be adopted, in the naked form in which it now stands, it will be a matter of indifference to me, personally, what shall be done by this body hereafter, on any subject. And it is only because this first resolution lies as yet, in abeyance on your table, that I am disposed to struggle in relation to what I consider next in importance. Sir, if the freeholders of this Commonwealth, in whom is the power, shall be weak and mad enough to surrender this question, they will have effaced, (were it not in Holy Writ,) all record of the stupidity of Esau. If we, the proprietors of the soil, the land-owners, who can give *notice to quit*, aye, and compel to quit too, all those persons who insist on taxing our land, submit to this, our "ineffable stupidity" ('I thank thee, Jew, for teaching me that word,') I say our "ineffable stupidity" will have effaced, (were it not inscribed by the pen of inspiration on the pages of Holy Writ,) all record of the stupidity of Esau. I do not know whether I shall take the trouble to rise, or keep my seat, when the question shall be called on the amendment of the gentleman from Kanawha.

I had no expectation of entering into this debate, but the appearance of apathy, which I witness (with a *solitary* exception,) is to me most afflicting and painful. There is one class of non-freeholders toward whom my heart yearns, if it were not restrained by my judgment: I mean the sons of freeholders; whose fathers cannot yet afford to lay them off their little modicum of land, and who, therefore, have to wait. To that class, I would now address myself, and I would say to them, cannot you trust your fathers? cannot you have a little patience? must you not, necessarily, succeed to this power? if not by inheritance, or bequest, at least by a few years industry? Will you go into joint stock with those "*vagabonds*" and that "*rabble*," so well designated by the gentleman from Frederick, who never mean to have a freehold? the profligate, the homeless; who, as was well said by the gentleman from Spottsylvania, "hang very loosely on society," but stick very closely to her skirts, and who are determined to pick up their vile and infamous bread, by every despicable means? I call on the young non-freeholders, the sons of freeholders, (and if I had a son, he should be my *own* son) I call on them to wait, and not to unite themselves with those who, in the nature of things, can have no permanent interest in the Commonwealth. I am very sure, that when they shall have understood this question, they will rally round their fathers and their brothers. I have no belief, that a Constitution with such principles in it, will ever be received by the sober sense of this good old Commonwealth. I would rather wish that all powers, Executive, Legislative and Judicial, should be at once entrusted to the General Assembly, and then trust the good sense of the people of Virginia, than inflict on them the curse of such provisions as those which the Committee have adopted.

Mr. Summers, in reply to Mr. Johnson, expressed regret at not being able to attach as much weight to his opinion in this case, as he was accustomed to do. He thought the expansive power attending this amendment, was its most valuable feature. He was willing to commit it to the wisdom of the Legislature, believing it to be a just principle, that all who contribute to the burdens of society, should have some voice in its affairs.

Mr. Stanard thought the amendment of the gentleman from Kanawha, went, at least, a bow-shot further, toward Universal Suffrage, than any proposition yet submitted to the Committee. He did not know how the gentleman would manage the matter with his friend from Loudoun, who, in his speech on a former occasion, had insisted that all taxes on consumption were paid by the consumer. If this were true, and an excise should be laid on spirits, every man who bought a gill of rum, would thereby pay a tax and get the Right of Suffrage; and thus the "*vagabonds*" and "*rabble*" of the gentleman from Frederick, (very properly so called,) would be entitled *par excellence* to that privilege. He insisted on the objection urged by Mr. Johnson, and then shewed that the lightest cattle-tax, would give a vote to every man west of the mountains; inferred the ease of introducing Universal Suffrage, and concluded with a strong appeal to the Committee, against so sweeping an amendment.

The question being taken, the amendment was *rejected* without a count.

Mr. Henderson now moved to amend that clause of the resolution which requires a residence of five years, of citizens of other States moving into Virginia, before they can be permitted to vote. He thought two years residence in the State, and one in the county, a sufficient test of permanent interest in the Commonwealth.

Mr. Nicholas said he should vote for the amendment. He was willing to give these citizens the right of voting after a residence of two years, but he would superadd to the qualification of persons of this class, the attainment of a freehold. He did not think that his part of the country would be injured by this proposition; and he thought it impolitic to throw impediments in the way of emigration to the State. He did not go with the gentleman from Orange, (Mr. P. P. Barbour,) in his doubts, that by prescribing one Right of Suffrage, we should interfere with the Constitution of the United States. He thought that this construction of the Constitution, went to impair the sovereignty of the States. He thought that we ought to extend courtesy towards the sister States, and endeavour to promote harmony with the States, by adopting a system of indulgent courtesy, and not restrict the rights of citizens of other States to such as have resided five years. He would, however, require a freehold, as the citizens of the other States cannot claim to be put on a footing with the citizens of Virginia.

Mr. M'Coy concurred in the sentiment, that the period of probation was too long, and that citizens of other States ought to be put on the same footing with our own: but he conceived this case provided for by that clause in the first part of the resolution, which declares that "the Right of Suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution:" a residence of six months only is now required.

Mr. Leigh thought this clause superceded by the effect of the subsequent proviso. He, however, disapproved of the whole of that part of the resolution relating to citizens of other States, as unjust, and hard in its bearing.

On motion of Mr. Henderson, the whole of that clause was stricken out, from the word "nor," to the end of the proviso. [See above.]

The Committee now proceeded to the fourth resolution of the Legislative Committee; which is in the following words:

"Resolved, That the number of members in the Senate of this State ought to be neither increased nor diminished, nor the classification of its members changed."

Mr. Pleasants moved to amend the resolution by striking out all after the words "Resolved that" and substituting the following:

"Representation in the Senate shall be based on the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, and adding to the aforesaid number of free persons, three-fifths of all other persons, and the Senate shall consist of a number not exceeding , and its term of service and classification remain as at present."

Mr. Pleasants said, that he was not very sanguine in the hope that the resolution which he had the honour to submit, would be carried by a large majority, but he hoped that something would be done; that a meeting of the two parties into which the question had divided the Committee, would take place. It was a subject of serious consideration what must be done. He observed at the time, that this mode of basing representation in the Senate was not acceded to by some of his friends. Provided that any gentleman thought the compound basis preferable, he was at liberty to modify his proposition. Such mode was suggested by the gentleman from Fauquier, but it did not meet his approbation.

He would take the liberty of making a few remarks in support of his proposition. The first idea which suggested itself to him was, to base the Senate on Federal numbers, or three-fifths of the slaves. His proposition, he thought, was more simple, less complex, and less fluctuating than the other mode. Besides, it produced nearly the same results as taxation and numbers combined. Under these circumstances, it was preferable to the mixed basis. He would add another reason which was mentioned out of doors, and which suggested itself to him. There was a strong objection to reject the Federal numbers, as it would give a plausible pretext to the other States to disturb the Federal basis in the United States, and to take away the influence of the Southern States. This idea would reconcile even those who were fanatical (if he might be permitted to use that term,) in their attachment to the other basis. In any amendment hereafter proposed by the States to the Constitution, such a pretext could not be assumed. These were the reasons why he gave the basis of Federal numbers a preference.

He was sanguine in the hope that this proposition would be adopted, as it would afford every security against the unequal taxation which was apprehended from basing the House of Delegates on numbers alone. A Senate so constituted, particularly when its numbers are extended, (as he hoped it would be extended to thirty-six, and he intended to fill the blank with that number,) it would give every degree of security which could be wished for. He was satisfied in the belief, that security would be obtained—he used the word security, as gentlemen objected to a guarantee—if the Senate was so constituted. He may be mistaken, though he had not much confidence in his opinion, but it would have the effect he mentioned, if the basis were so modified. He adverted to the resolution offered by the gentleman from Fauquier, which was in the following words:

“Resolved, That in the apportionment of representation in the Senate, regard shall be had to taxation exclusively; that the Senate shall consist of thirty-six members, and shall have the same legislative powers, in all respects, as the House of Delegates, and all appointments referred by the Constitution to both branches of the Legislature, shall be made by a concurrent vote of both Houses.”

This appeared to him to give to the Senate a power of originating tax bills—to give them a concurrent power. Even the United States’ Senate has not this power—it was prohibited by the Constitution. But if this proposition of the gentleman from Fauquier prevail, it will give to the Senate a power of originating money bills which is not enjoyed by any other Senate. He had a strong predilection for his proposition. He had no hesitation to allow the Senate to exercise the power of a veto on the measures of the House of Delegates. He had experience in this matter, and he preferred the practice of the Virginia Senate to that of the United States. The last year he had the honour to serve in the Senate of the United States, it reported almost as many bills as the House of Representatives. It was customary to present memorials to the Senate, and to originate bills thereon, after they had been rejected by the House of Representatives. He recollected this perfectly. He had no doubt, that this subject being so long under the consideration of the Committee, gentlemen had made up their minds upon it. He would therefore leave it to the consideration of the Committee. He was prepared to listen to the arguments of gentlemen, and he would adopt that proposition which to him appeared best.

Mr. Doddridge moved to amend the amendment by striking out all after the word “based,” and inserting the following:

“On the whole number of free white persons, including those bound to service for a term of years, and taxation combined.”

Mr. Tazewell submitted to the Chair whether the motion was in order. The gentleman from Goochland, (Mr. Pleasants,) had moved an amendment to the original proposition—the gentleman from Fauquier, (Mr. Scott,) had moved an amendment to that amendment, and now the gentleman from Brooke offers an amendment to an amendment.

The Chair decided that the motion was in order. The gentleman from Fauquier having merely given notice of his intention to offer an amendment at a proper time, but not having offered it.

Mr. C. Johnson said, no difficulty on the point of order could arise in regard to this proposition, nor would any difficulty be thrown in the way of the gentleman from Fauquier. The question now before the Committee, related to the comparative merits of the two propositions relative to the Federal and the compound basis. Whether he should afterwards prefer the simple proposition of the gentleman from Fauquier to both, he could not now say; but he did not hesitate to say that of the propositions now presented to him for his choice, the Federal and compound basis, he should prefer the Federal numbers. He knew that on the minds of the people there was an unpleasant impression respecting the introduction of the Federal numbers in any way into the State Constitution, but he was not to be deluded by names. He looked to the character of the thing, and examined the consequences, whether if the mixed basis or the Federal numbers were adopted, the apportionment of power would be nearly the same. He was induced to favour the principles of the Federal numbers, because it was simple in its character, easy to be ascertained, known to the laws, had been habitually applied in practice—was not variable at the will of the Legislature, nor leaving with them the discretion to change it as they might think fit. The compound basis was liable to these objections, and this led him to vote for the Federal numbers, and against this amendment.

Mr. Doddridge said he would make but a very few remarks. If any thing was due to the feelings of those, who, if not the majority, are a large minority, it should impress itself now. If the East should obtain the mixed basis in either House, the Western people will believe it to be an improper decision of the Convention. As to numbers, if there be any change, he would prefer to that, the combined basis of persons and taxation. The effect would not be the same. The people of colour in the East were increasing in a ratio greater than the whites. From 1790, the ratio of increase of blacks had been forty-four and a fraction, while that of the whites had been but thirty-six and a fraction. The increase of the blacks will be still greater hereafter. By the increase of population, and the improvement of the lands in the West, the amount of taxes made to the revenue has increased, and its burdensome relation to the General Government has diminished. As to the propositions before the Committee, he was disposed to go far for the purpose of conciliation. If harmony could be produced, it would be almost sufficient to reconcile him to any sacrifice. Still if we must submit, it was but fair to allow us a choice.

One word more: propositions have been made to increase the number of the Senate. He from reflection was particularly opposed to such an increase. If we retain the number twenty-four in the Senate, we have a divisor of the House of Delegates.

Concurring in the views of gentlemen on the other side so far, as to be unwilling to disturb the existing Constitution where there is no absolute occasion for it, he was desirous to have it undisturbed in this particular. To twenty-four as the number of the Senate, we have been long accustomed. For all the purposes of a check it is sufficient. The Senate has heretofore been what it was intended to be—a body of calm, reflecting men, not disturbed by any agitation originating with themselves, but having time to regulate and check those of the other branch—having in fact a much more elevated and useful duty to perform than merely to dot the i's and cross the t's of the other body. The proportion of bills from the House of Delegates which had been rejected in the Senate had been large—it was less than usual at the last session—he believed about ten. Some of these were bills which in their passage in the House of Delegates excited considerable sensation. There was one bill which was *five* times rejected during a single session, and its discussion lengthened the session about a week. A great excitement prevailed in the Capitol on that occasion, but he believed that it did not extend beyond the Capitol. He mentioned this for the purpose of shewing, that the Senate was a serious check on the other House, particularly in relation to revenue bills, and he had never heard any complaints of that body. He was willing to increase the number, if that would give the Senate a larger scope of action, but this would depend on the collateral increase of public confidence. He who had greater confidence in large bodies than in small ones, would wish to increase the number, in order to increase the influence of the Senate. But he who thinks that in small bodies there exists a greater proportion of wisdom and stability, will not wish to increase the number. Thinking a small body better calculated to proceed with caution and wisdom, his confidence was in the opposite ratio to numbers. He therefore had more confidence in a Senate of twenty-four members, than he should have in one of twice that number. If an increase is not called for by the people, why should the Senate be increased? The people are taught to believe that one of the motives for the diminution of the number of the House of Delegates, is to diminish the ordinary expenses of the Legislature. Instead of a diminution, an increase of expenditure must be the result of an increase of the number of the Senate. He hoped there would be no diversity of opinions on this subject. It had been already said, that the Senate was deprived of the power to originate bills, or schemes of finance, and this leaves them sufficient time for deliberation and digestion. Here then we have something by which to demonstrate that the Senate deliberates more than the House of Delegates, and we have found it to be so. An augmentation of the number would be productive of an increased expenditure, both on account of the addition to the present number, and of the lengthening of the session. He hoped that his amendment would be favourably received by the Committee.

Mr. Leigh in rising to address the Chair, said that he would not enter into any comparison between the two propositions. Both of them were abhorrent to his ideas. He desired a different basis. He merely intended to remark on the argument which had been used by the gentleman from Brooke, in comparing it with the argument which the gentleman had used in the discussion of the white basis. The gentleman now tells us that as the population of the West increases, taxation will also increase; that the slaves are increasing in the West in a greater ratio than in the East, but that the increase of power in the West would not be in proportion. Now, he had understood the other day, that considering the course taken by the States of Ohio and Pennsylvania as the cause, slave property had not increased in the West. If there is to be this increase of slaves in the West, cannot the West obtain the power which they wish by taxation, in the Senate, as they would surely have it in the House of Delegates? He might have misunderstood the gentleman from Brooke, but he could not avoid considering his two arguments in opposition to each other.

Mr. Doddridge said, he could not suppose his argument on the basis of Representation in the House, was at all forgotten. The question in the discussion was this, whether if the power was in the West, there would not be danger of oppression to the slave-holder in the East? To prove that there was no danger, he shewed the probability of the increase of slaves on the Western waters. With the slaves already there, and their natural increase, there would be an increasing confidence in the East that they had nothing of injury to themselves to apprehend. But now he was proceeding to shew, however it may be, that we should be less oppressed—for, oppression it would still be—we should have less to fear from the principle of taxation and numbers, than from the Federal numbers. He begged to bring the view of the gentleman to the present state of the country. The lands from the head-of tide-water to the ocean, are nearly worn out; so are they in a great degree, worn out between tide-water and the Blue Ridge. There is not much to be gained, therefore, in those parts of the State, from any system of reclaiming culture. There might be something gained by increased persons and population. He believed there was no inconsistency in the arguments he had advanced. He had alluded to the vast number of slaves on this side the Blue Ridge, and the ratio of increase as compared with the ratio of in-

crease to the West. How was it possible for him to bring any thing which could occur in the West, to counterpoise this increase in the East?

Mr. Leigh rejoined: He said, this was a singular kind of explanation—under pretence of explanation the gentleman had taken the floor from him, and interposed in the midst of remarks he was making, a new argument on the point in debate. He did not admit the explanation as satisfactory, and urged and enforced the charge of inconsistency. He was indifferent which plan should prevail: he objected to arsenic as much in a preserved *cherry*, as in a preserved *strawberry*. It had been lately necessary to administer calomel to a little son of his, and sweetmeats were employed to cover it; but the child could not be deceived by it; neither could his father by a similar process. The mixed basis in the House of Delegates had been opposed on principle as "aristocracy." The principle here was the same, though not the degree; and were the gentlemen on the other side in favour of an "aristocracy" to a degree? The only way he could conceive to account for their apparent inconsistency, was in their conviction (in which he agreed) that the mixed basis in the Senate would be *valueless*, and no effectual security whatever against the power of the House of Delegates. He said that he had a peculiarity of temper, which rendered him perfectly indifferent to the charge of aristocracy imputed to him *personally*, but at the same time very sensitive to the imputation of aristocracy to any measures or principles, which he thought calculated to advance the general weal.

Mr. Doddridge rose to suggest a single remark. The proposition assumed, had been treated as if it had originated with them. If a physician present me with two pills—one more nauseous than the other, I am surely at liberty to select which I will take. I regard either the mixed basis, or the Federal basis, as an evil; but I suppose one or the other must be taken, and I must take that which is the least nauseous.

Mr. Mercer suggested, that as they had a Constitution, and were called to amend it, if they could not get what they esteemed the *best* amendment, they must then try and get the *second best*. If he must swallow either arsenic or calomel, he should prefer the calomel. If his child was very sick, and in great pain, it might possibly be induced to swallow arsenic itself, (which, administered in a certain measure, may be taken without injury,) to continuing under the pain it endured. They had never advocated the propriety of basing representation on property, and, therefore, the charge of inconsistency did not hold. The existing Constitution bases Representation, neither on property nor numbers, but on an arbitrary arrangement of districts, by which one hundred and eighty thousand men were made to out-vote four hundred and twenty thousand: and by which, one man on the sea-board, was made equal to twenty-seven men in the interior. He remarked to Mr. Pleasants, that if the Senate remained of its present number, he should vote for allowing it concurrent power with the House of Delegates, in the joint election of officers; but *not*, if its numbers were enlarged.

The question was then taken on Mr. Doddridge's amendment, and decided in the negative: Ayes 34, Noes 59.

(Messrs. Madison, Monroe and Marshall, all voting against it.)

So the Committee refused to sanction the mixed basis in the Senate.

Mr. Scott now moved the amendment he had formerly read, and which is in the following words:

"*Resolved*, That in the apportionment of representation in the Senate, regard shall be had to taxation exclusively; that the Senate shall consist of thirty-six members, and shall have the same legislative powers, in all respects, as the House of Delegates; and all appointments referred by the Constitution to both branches of the Legislature, shall be made by a concurrent vote of both Houses."

The question being taken, the amendment was negatived: Ayes 39, Noes 54.

(Messrs. Madison, Marshall and Giles voting for it.)

The question then recurring on the amendment of Mr. Pleasants,

Mr. Joynes moved to fill the blank for the number of Senators, and to strike out the words "a number not exceeding."

The motion was negatived: Ayes 42, Noes 51.

(Messrs. Madison and Marshall in the affirmative, Monroe and Giles in the negative.)

Mr. Summers now moved to fill the blank with the number thirty-two; Mr. Brod-nax with forty-eight, and Mr. Doddridge with twenty-four.

Mr. Upshur expressed his desire to see some Constitution formed which should be acceptable to the people; and if there should be such a distribution of power between the two Houses as he could approve, he should vote in favour of the plan. But this he would never do, unless there was a *large increase* in the number of the Senate. Without this, it was vain to tell him of any security. Give us, said he, such a number as will at least afford us, in our own view, something like security. Every feeling of my heart would urge me to the most amicable course. I have none but the most friendly feeling toward those whose views differ from mine. Yet, I must be per-

mitted to say, that it is, in effect, (though not in their intention,) a mere mockery to tell us of security, while they adopt such a basis for the Right of Suffrage, and are pursuing a course to render the Senate as little of a check upon the other House as possible. Even there my best feelings lead me to meet them (a compromise is out of the question,) on such ground as will permit us to believe that we have some security. I believe that I could be contented with some modification of the Senate. Nothing would delight me more, than to be able to go home and advise my constituents to adopt the Constitution. But if gentlemen will base the House of Delegates on the white population, and then refuse to give us more than twenty-four members in the Senate, they afford us no security, and their very best friends on our side of the House will be driven from them. I could wish a Senate of forty-eight members, but I will be content with thirty-six. Lower than this, I cannot go.

Mr. Doddridge said, he had no doubt the gentleman would be gratified to see the Constitution adopted; but if he wished to send a Constitution to the people, which they *could* not accept, he was taking the very course to do it. The people already are represented on the white basis in the Senate: they stood as they wished in that branch of the Government. You then proposed to afford us a correction of the evils of which we complained, by a new basis in the House of Delegates; but now you are for *taking away* from us all the relief we got in 1816, and you propose to turn the Senate, in effect, into a new House of Delegates, adding to the basis three-fifths of your slaves, and giving such a Senate the power to originate all bills. If this is to prevail, our evils will only have *changed sides*, and we shall be worse off than we were before.

Mr. Baldwin, after some remarks upon the difficulty of their situation, proposed to lay the present resolution on the table, until that fixing the basis of representation should be settled. Let there be a full, fair, and manly compromise on that subject, and then give gentlemen as large a Senate as they desire. He declared himself in a clear and emphatic manner, as opposed to all higgling. He concluded with submitting a motion to lay the resolution upon the table.

Mr. Mercer suggested, that a better course would be, to append the resolution with respect to the basis of representation to the present resolution, in the form of an amendment, but

Mr. Baldwin, not accepting this suggestion, persisted in his motion to lay on the table.

Mr. Naylor was opposed to it, wishing first to know what price he was to get, if he consented to a compromise. Before, however, any vote was taken,

On motion of Mr. Baldwin, the Committee rose, and thereupon the House adjourned.

WEDNESDAY, NOVEMBER 25, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong of the Presbyterian Church.

The House then went into Committee of the Whole, Mr. Powell in the Chair; and the question being on the several numbers proposed wherewith to fill the blank in the resolution, fixing the number of members in the *Senate*,

Mr. BAYLY rose and said, that he would take this opportunity of proposing that the blank should be filled with the word *forty*.

He did not believe that the number forty-eight, which had been proposed by the gentleman from Brunswick, (Mr. Brodnax,) would be agreed to, and the number thirty-six had been rejected. He had offered forty, and would explain his reasons.

When I first saw (said Mr. B.) the report of the Legislative Committee, declaring that the present number of the Senate (twenty-four,) should neither be increased nor diminished, I had determined to vote against the resolution; for I had believed, before I came to this Convention, that forty members would not make the Senate too large. The proposition is, therefore, not made in reference to the basis of representation in the House of Delegates, nor did it originate with me to affect any principle of compromising that great question, which agitates this Assembly. On most occasions, I do not like compromising rights, but some concessions must be made; and if the Senate can be so constituted, as to effect that most desirable object, it must be by increasing their number, and giving them concurrent power to originate laws. I shall, however, advocate the motion entirely upon its own merits, because I am convinced, that constitute the House of Delegates as you please, and make the number of members one hundred and twenty, or more, your Senate ought to be one-third the whole number of Delegates, and with equal powers of legislation.

Sir, I have had some experience on this subject. By the old Constitution, "all laws must originate in the House of Delegates, to be *approved* of or rejected by the

Senate, or to be *amended* with the consent of the House of Delegates, except money bills, which, in no instance shall be altered by the Senate, but wholly approved or rejected;" and under this power of amendment, many of the most important laws now in your Code, have been introduced original bills in the Senate and concurred in by the House of Delegates, as amendments to bills sent to the Senate; for example, the House of Delegates pass an act, making a trivial alteration in the law respecting the Courts, and the Senate amend, by striking out the whole after the enacting clause, and re-model the Judiciary system, not as it relates to one Court only, but to every Court; for, the title of the bill has given the power, and the Constitution jurisdiction, by the term *amendment*.

The Senate do not consider their power, by this word *amendment*, restricted merely to verbal or critical alterations. You had better expressly give equal power of originating laws to both Houses of the General Assembly, and thereby prevent collisions between them, than to permit it to be used by implication, which has heretofore protracted the sessions many days. On one occasion the Senate amended the appropriation bill, and were unanimous, that they had the right; the House of Delegates rejected the bill and amendment, with unanimity, denying the right to the Senate, and insisted, that an appropriation is a money bill. In that instance only, did the Senate succeed against the House of Delegates, and maintained the doctrine, that laws *laying* the taxes were the money bills contemplated by the Constitution, and that when the money was in the Treasury, the Senate had equal power over it. Sir, the Senators are equally the representatives of the people, and have no interest separate and distinct from them; this jealousy of the two Houses of Assembly towards each other, ought to be guarded against by the Constitution we are endeavoring to make, by conferring upon the Senate the authority to originate any bills, even *money* bills. This restriction upon the Senate respecting money bills, is borrowed from the Constitution of England into our own. It is refused to the Upper House of Parliament to lay the taxes, because the Lords do not derive their power from the people, are created by the Crown, and have a separate and distinct interest from the Commons. No such reason exists in this country.

Should this power be given to the Senate, they will freely confer with the Delegates, and each knowing what acts of Legislation it is necessary to pass for the good of the State, both Houses will be employed at the same time perfecting the public business upon different subjects. But now, the Senate after eight or ten days session, adjourn for two or three weeks, because the House of Delegates before that time, will not probably pass any important bills, and the Senators having nothing to act upon, some go home, others remain without any public duties to perform. Give the Senate power to originate bills, and all will be right.

The Senate of the United States may be compared to an Assembly of Ambassadors, representing Sovereign States, and their duties are complicated and various: they participate in and greatly control the Government in the policy towards foreign nations: this, with their Executive duties, which is often very perplexing, occupies as much of their time as is bestowed on Legislative business; and yet, they possess equal power in originating laws as the House of Representatives. I may appeal with confidence to gentlemen in this Convention, who now are or have been members of the Senate of Virginia, to say whether the power to originate bills would not greatly contribute to shorten the sessions of the General Assembly.

The long and expensive sessions was one great cause for calling the Convention, though it certainly was not the leading cause. The House of Delegates now consists of two hundred and fourteen members; the Senate of twenty-four. If we organize the House of Delegates with one hundred and twenty members and the Senate with forty, the General Assembly will be reduced seventy-eight members, which will shorten the sessions perhaps one-fifth of their usual length of late years, which, together with the reduction of the members, we may calculate on a saving of public money of 40 or 50,000 dollars annually, and have the business of the State better done.

The last General Assembly was in session ninety days, and cost the State 108,773 dollars 85 cents, which was more than 1200 dollars a day. The memorable General Assembly of 1793, was in session fifty-three days. The Delegates were one hundred and seventy-nine; the pay of the members being two dollars a day, the whole expenses of the session were \$29,332 60. The General Assembly the next year, 1799, continued in session fifty-seven days; the daily pay of the members was raised to three dollars, and the expenses of that session were \$40,631 19. And I believe it is universally admitted, these two General Assemblies possessed more eloquence, talents and wisdom, than any that has ever since assembled in Virginia.

The present number of the Senate, twenty-four, is too small: the House is considered very full with twenty members, and many of the most important laws now in the Code, were passed into laws by not more than eight or nine votes, and with a majority of one or two. This is too small a number of men to give law to this Commonwealth, or to controul the immediate representatives of the people, if they fall into error. In-

crease their number, give them employment by originating laws, and the State will have the benefit of their wisdom, experience and industry; the business of legislation will progress equally in the two Houses, with harmony and expedition, and will have the confidence of the people.

In 1776, when the Constitution was made, the Convention then wisely fixed the number of the Senate to twenty-four. At that time the population was not one-half what it now is, and was condensed on the East of the mountain; it was then absolutely necessary to have a most economical Government: a revolution was commencing, and the State had little money or credit. There were twenty districts below the Blue Ridge, and they were small: the local interest well known and respected; and should the number be increased to forty, each district will contain more population, than under the present Government, when first put into operation, and for many years afterwards. The Senate must represent the people, and the Representative should be known personally to a large portion of his constituents, to obtain their confidence and respect: this will not be the case in large districts.

Examine the Map of Virginia and the position of the water courses, and more especially the district I have the honor in part to represent. Two counties on the Eastern Shore, Accomack and Northampton, and three on the Western Shore, Gloucester, Matthews and Middlesex, separated by the Mediterranean of the United States, the Chesapeake. On the East of that water, the trade is to New York, the London of America, or to Philadelphia, while the produce of the Western Shore of that Bay finds a market within the Capes of Virginia. The people of the district, thus separated, and their trade going to different places, and having no intercourse, they are as unknown to each other, as if they resided in different States. The Senators who represented that district the two last terms of four years each, resided on the Western Shore, and were unknown to the people on the Eastern Shore when the election commenced, and I do believe, never trod on that land before they commenced their canvass. Do you believe that these Senators being unknown to that people, would command their respect and confidence equal to a Delegate that was known to them, should a difference of opinion exist, respecting a great and important political measure. On such an occasion, the people would espouse the opinions of that man who resided among them. Before the great change of the Senatorial Districts took place throughout the State in 1816, the Eastern Shore from the adoption of the Constitution to that time, formed a separate Senatorial District; and although one county had more than three votes to the other's one, the people having great intercourse and confidence in each other, their interests being the same, it was not considered by them material in which county the Senator resided, and immediately after the first election under the Constitution, it was considered wise, that each county should alternately have one of its citizens sent to the Senate, which arrangement continued forty-one years, in harmony and good feeling between the people of these counties, as a strong illustration of the advantage of small districts, to the peace and happiness of the country. The situation of other parts of the State, also requires the election districts to be small. The counties of Brooke and Ohio, formed from a long strip of land, bounded by the States of Pennsylvania and Ohio, and united to Virginia by a line of fifteen or twenty miles, and having more intercourse with these States than with Virginia, the people of these counties cannot be presumed to have great intercourse with the people of Kanawha, so as to judge of the qualifications of the Senator residing so remote from them. The same argument will apply to other parts of the State, divided by great rivers and mountains: for example, take the country situated between the wide rivers of James and York, and extending from Hampton towards Richmond, and before you get the requisite population to form a district for a Senate of twenty-four members for the whole State, you will pass this city, and your district will be one hundred and fifty miles long; and is it probable that the home-staying and industrious farmer, will be sufficiently acquainted with the character and talents of gentlemen who reside at the extremity of the district, to give him his vote?

The Northern Neck is similarly situated: commencing at Smith's Point, and proceeding up between the Potomac and Rappahannock, before you form a district of sufficient population, you will be in full view of the mountains. The same difficulty is to be met with in some of the sections of the Alleghany country. The Senator from such large districts, will not know the grievances of the people, or their local interest, but must depend for information upon others, when called to act; and he will not long possess the affections of the people. Sir, should the Senator put himself in opposition to the five or six Delegates of the district, (and his duty will often compel him so to do,) and they go before the people supporting their own views and opinions; the Delegates thus united, will defeat the re-election of the wisest and most patriotic Senator that ever sat in the Senate-house; nor will his virtue, integrity and talents shield him against the attack of those who are so much better known to the people.

I have examined the Constitutions of several of the States, to see what proportion of the number of members the two Houses of the Legislature are to each other; and I find,

Delaware has nine Senators and twenty-one Representatives :

North Carolina, sixty Senators and one hundred and twenty members of the House of Commons :

Ohio, Indiana, Illinois and Tennessee, the Senate shall never be less than one-third, nor more than one-half of the number of Representatives :

Mississippi and Alabama, the Senate never less than one-fourth, nor more than one-third of the number of the Representatives :

Louisiana, the Senate always fourteen, the Representatives never less than twenty-five, nor more than fifty.

Should the motion prevail to fill the blank as I have proposed, it will give the Senate a controlling power, which it ought to have, and make it such a representative body, as to secure the respect and confidence of the people.

Mr. Baldwin explained what would be his proposition for compromise, viz : to propose the white basis in the House of Delegates, and the Federal number in the Senate, and make the number of the latter thirty-six : but as it was not in order to move it now, he moved first, that the Committee pass over the propositions for filling the blank, in the resolution prescribing the numbers of the Senate.

Mr. Doddridge said, if that motion should prevail and the proposition of the gentleman be presented to the Committee, he should immediately call for a division of the question upon it, and take its parts separately.

Mr. Mercer gave notice that after the Committee should have passed on the proposition of the gentleman from Augusta, (Mr. Baldwin,) he should move the consideration of the report of the Executive Committee, with a view to settling the power of the Senate before determining its number. He would consent to give them concurrence in the appointing power, if on the white, or on the mixed basis, but not if its number was to be so enlarged as to open a door for faction. The power of the Senate would be more strengthened by the power of appointment than by an augmentation of its numbers.

Mr. Leigh was in favour of passing by for the present, the propositions for fixing the number of the Senate, and then taking up the report, not of the Executive, but of the Judicial Committee. He had in his mind, a proposal, different from any that had yet been submitted and which he hoped would unite the assent of all, (provided gentlemen, as they said, were willing to give and take,) but before he could announce it, he wished to consult the delegations from one or two of the districts which would be most affected by the plan. If they should refuse their assent, he would not propose it.

Mr. COALTER then rose to address the Committee, as follows :

I threw myself, most *improperly*, and I now find *unnecessarily*, on the Committee the other day. I had been elsewhere engaged, and knew not the stage of the proceeding.

My friend from Chesterfield, seemed to say that the *crisis* was at hand, and I knew not that I could again be regularly heard.

I am peculiarly situated. I belong, by *birth, growth* and every kind of obligation to the transmontane country.

The good opinion and good feeling of that country towards me, and of every member of it on this floor, is a cordial which I will not have dashed from my lips or from my heart, if I can help it. I give you my heart's blood, Sir, *freely*, if that will cure all the evils that now afflict Virginia ; but leave me that cordial.

I may be *mistaken* in my opinions, and I may err in my course here ; but I will yield to no *native of the West* in my love for the land of my birth ; nor in the anxious desire I feel to see it every thing which I know it is capable of being.

But, I now have *new interests* and *new connexions* on this side of that line, and these may lead me astray. This is very true, and I am very willing that it should be thrown into the scale, to weigh against *my judgment*. I ought to weigh it *myself* against *myself*. The words of truth say that the heart of man is deceitful, &c. I may have *vanity* enough to suppose I am above this. But that most wise and excellent of all Governors, *Sancho Panza*, has said, that there is nothing *more vain* than *vanity*.

I *know* I may be wrong—I *fear* I may be wrong in all I may say or do.

I have seen the day when I would have had no such fears—when I would with as little fear of error, have drawn a new Constitution for this State—yes, on my knee in a Court yard, as I would have drawn a declaration on a *plain bond*. I was perfectly persuaded that the great mass of the people were capable of every thing ; that Universal Suffrage was the true palladium and safeguard of our rights, founded in nature, and that all mankind must finally yield to it—that it was a millenium fast approaching—that France was *regenerated*, and that all mankind would follow in the train—America, glorious America at the head !—that our Senate was an aristocratic body, thwarting the good sense of the people in their Hall of Representatives—that the Council was a *fungus*—that the people ought to elect their own Governor, and their Executive and Ministerial Officers, civil and military, for which they were *created* for

them, and *by* them, and they alone were the proper judges of their fitness and capacity. But, suppose I was now a Western man, and joined with Western men in all their views, could I be more certain that there was no *alloy* of interest, no feeling that has been produced by excited passions in myself or those around me—no real, or supposed sense of past injustice, which may have warped my judgment, which may have led me back to the visions of my youth, and courted me to go back to opinions once solemnly abandoned? Surely this would be a fit cause for serious *self-examination*.

I have lived, Sir, either to have much weaker nerves; or, having witnessed what has passed here and elsewhere, during the last thirty years, to have acquired a sounder judgment, and a more correct view of things—perhaps, I have become *too fearful*—*Discretion*, it is said, is the better part of valor; and perhaps a little *fear* is not a bad ingredient in a politician, who is about to put forth his hand to tear up—plant a-new, or even to *prune* away and replace portions of a Government, under which such a people as these of Virginia have lived, until within a few short weeks, safely and happily. I confess *I am afraid*—perhaps I have caught the epidemic which prevails in the country. Who is there then who is not afraid? Not one! I must nerve myself though, as well as I can, at least against *idle fears*.

I must try and make such amendments to the Constitution, that I will neither be afraid nor ashamed to recommend to the confidence and affections of this people.

But, I must have a very large majority of this body to back me in it; or my strength will depart from me.

There is one thing which I now wish distinctly to make known to this body, and to my constituents.

It is of little consequence to me, in this, or any future stage of the business, whether I fall into the minority or majority, provided that minority is large, or that majority is small. This is not ordinary legislation; to be re-examined at the next session, and the evils, if any growing out of it, corrected with as much ease as they are inflicted. When we adjourn, we adjourn *sine die*.

There is no *locus penitentiae* left to us. We can only go home, and as *individuals*, oppose or approve the work of this body.

I consider a large minority as an *equal division* of this body—as a state of things which does not admit of final action; and if in the course of human events I am in a small majority, I will not impose on a large minority a Constitution against which their feelings or judgments rebel. I will vote down *finally*, so far as my voice goes, all innovations of that kind; as believing it most safe and wise to leave the present Constitution as to such matter, where we found it.

If my constituents disapprove of this, the sooner they recall me, the better; I will most willingly obey that call.

I feel a responsibility that is almost deadening to me, and would willingly shift it to abler hands.

I believe—I *can't think otherwise*—that I will be in a majority, finally, on this point. *Surely—surely*, we are not prepared to enter the great arena of the human passions, with the anathemas of *Aristocrat—Monarchist—Oppressor of the Poor—Enemy of the People*, and of human rights, on the one side, in order to carry through our work,—and with the denunciations of *Demagogue—Agitator—Radical*, &c. on the other!! No, Sir; the few hairs I have remaining, rise on my head at the bare supposition.

No, Sir; we were sent here by the people, as their *sure and true friends*; to see whether we could confer on them any *additional blessing*: *To be sure*, that we could confer this on them, before we deprived them of what they had: Not to inflict on them the countless miseries which must arise from such a state of things.

No, Sir; we must either return to them the *gold* which they have entrusted to us, without farther alloy; or we must purify it yet more, and put the *Tower Stamp* on it. This can only be done by a large majority of this body.

We can't return it to them mixed up with the *dregs* of contending passions and interests, and put it on them to purify and refine it.

They can only reject such a mass, and, if indeed man is capable of self-government, *they will reject it*. They will say, as I say, we will not impose on a large minority of our fellow-citizens a Constitution which *they* think a *bad one*, for one which they and we know is a *good one*. We may be mistaken; some of our wisest men, and most tried patriots think we are mistaken, and we will not risk it.

Surely all would say, that this would be *wisdom—patriotism—magnanimity* of the highest order. But can we say that the great body of the people will take this course, if we set them a contrary example? We are now to say whether such would be the correct course. If we say no; you must bandy words and epithets; call in the passions; avail yourselves of every prejudice. *This* is the way to establish your liberties and the happiness of the State; then indeed the foundation of the great deep will be opened, and *voe* be to those who do not seek safety in that *Ark of the Covenant*, the *old Constitution*, which has borne us triumphantly through so many dangers and difficulties!

Impressed with these views, I hailed with pleasure unspeakable, the proposition of my friend from Augusta; seconded by my trusty friend and coadjutor on another interesting occasion, from Hampshire, to see if a *fair, open, manly, and honourable* compromise of conflicting interests and opinions could not be made.

They very wisely want to see the *quid pro quo*; this is precisely what I want to see, also.

But, it seems to me we cannot see this at present. There are other great interests to discuss, besides those which have been before the Committee. How are we to agree on *them*? It is of no consequence to me when the evil is to creep in, which shall put it out of my power to vote for the amendments which may be offered. I might yield much on some points, for a *safe Constitution* on others; and which I would not yield but for that *quid*. All would avail nothing, if *Mordecai* still sits at the door; I want to see the whole ground; the whole instrument, before I can sign and seal any part. I must tear off my seal, if I don't agree to the whole instrument.

I plead *non est factum*—in fact, it seems to me impossible to come to any available compromise, until we have the whole ground before us. There are things to come that may be equally, or even more objectionable to me, *if possible*, than extending the Right of Suffrage, substantially beyond what it now is.

I allude particularly to the mode to be agreed on for electing the Governor. As to the Judiciary, I never have entertained any fears about it. I fear unwise legislation in regard to it, it is true; having much experience on that point; but I have no fears as to the *fundamental laws* in regard to that department; I mean as to the Superior Courts. As to the county magistracy, there may be danger; but of what character I am not apprized. These, Sir, are my views at present; I am not prepared to propose any thing; I thought it due to myself to state candidly what were my general views.

Mr. C. concluded by saying that he had not seen any of the documents printed for the Committee; that he had no specific propositions to make; but that he would prefer with the gentleman from Loudoun (Mr. Mercer,) to pass on to the Report of the Executive Committee.

Mr. Baldwin withdrew his motion to pass by filling the blank with numbers for the Senate; but

Mr. Mercer renewed it, with a view to taking up the Report of the Executive Committee.

Mr. Gordon, after some remarks on his peculiar situation, and his earnest desire to effect a compromise, read in his place the following amendment to Mr. Pleasants's proposition, as a plan to effect that object:

“Resolved, That the Representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows: that is to say,

“There shall be ten Senators West of the Blue Ridge of mountains, and fourteen East of those mountains.

“There shall be in the House of Delegates one hundred and twenty members; of whom twenty-six shall be elected from that part of Virginia lying West of the Alleghany mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; thirty-seven from the Blue Ridge to the head of tide-water; and thirty-three thence below.”

He commented at some length on this proposal, shewing what would be its practical effect. It would leave in the whole House of Delegates a majority of twenty to the East of the mountain.

The twenty-six counties West of the Alleghany, would have twenty-six Delegates: the fourteen counties in the Valley, twenty-four Delegates; the twenty-nine counties of middle Virginia, would have thirty-seven Delegates; and the thirty-six counties and four boroughs of the tide-water country, would have thirty-three Delegates.

He preferred the county basis for representation; and thought it might with some little accommodation be arranged in the tide-water country as in the rest of the State; a few of the smallest counties giving up their claim to individual representation.

He placed this copy of the resolution on the table for the inspection of the members.

The question being taken, it was determined to pass by filling the blank for the present: Ayes 51.

Mr. Mercer now moved to take up the report of the Executive Committee: the motion was opposed by Messrs. Brodnax and Nicholas, and *negatived*.

The Committee then proceeded with the report of the Legislative Committee, and took up the eighth resolution, which reads as follows:

*“Resolved, That it ought to be provided, that in all elections for members of either branch of the General Assembly; and in the election of all officers which may be required to be made by the two Houses of Assembly, jointly, or in either separately, with the exception of the appointment of their own officers, the vote should be given openly, or *viva voce*, and not by ballot.”*

Mr. Brodnax now moved as a substitute for the above, the following :

"*Resolved*, That it ought to be provided in the Constitution, that in all elections in this State, to any office or place of trust, honor or profit, with the exception of the appointment of the officers of the General Assembly, the votes should be given *viva voce*, and not by ballot."

On the suggestion of Mr. Randolph, he asked leave to withdraw the clause which permits the officers of the House of Assembly to vote by ballot for their own officers.

Mr. Claytor, approving the general principle of *viva voce* elections, objected to carry it into all Legislative Assemblies, so as to open a poll for the choice of their officers. He was about to reinstate the clause; when

The Chair suggested that to vote against leave to withdraw it, would have the same effect.

Mr. Brodnax defended the principle, and contended that there should be no exception on its application. In some elections in Congress, resort had been had to ballots of different colours that members might have the opportunity of letting their votes be known to all.

Mr. Claytor thought there was no need of enjoining it by Constitutional provision: the Legislature might use their discretion in the case.

Mr. Johnson concurred in this view. There was no danger of intrigue and corruption in the election of the officers of the Assembly; and it was not desirable, that officers who were continually to come in contact with the members, should know who had voted for and who against them.

Mr. Randolph said, that he hoped in common courtesy the Committee would not refuse the leave asked by the gentleman from Dinwiddie. In the whole course of his Parliamentary life, he had never known the leave denied. If the gentleman from Campbell, (Mr. Claytor,) felt strenuous on the subject, he would move to re-insert the clause. As I am on my feet, said Mr. R., permit me to say that there are many who remember the important election of Speaker to the House of Burgesses in 1799—1800; an election, in which the Commonwealth of Virginia felt as much interest as she has done in any one election from that day to this. It was during that session that the venerable gentleman who is at the head of the Orange delegation, and, I may say—speaking of his experience and weight of character—at the head of this Assembly, brought in his celebrated report on the Alien and Sedition Laws, which put a curb in the mouth and a hook in the nose of the great Federal Leviathan, and which some gentlemen seem so anxious to remove. As to the saving of time, the Clerk can call over the names of the members in far less time than it takes to collect the ballots, count them and ascertain and report the result. All gentlemen know the difference in time between merely calling the yeas and nays, and conducting an election by ballot. The Clerkship of the House of Delegates is an office of great profit, and of yet greater trust and honour. I can see no ground of discrimination between an election in the House of Delegates, and an election elsewhere. But it was not with this view that I rose, but merely to vindicate what I consider as in common courtesy, the right of the gentleman from Dinwiddie: I could not justify it to myself to offer such an act of rudeness and indignity to that gentleman, as to refuse the leave he has requested.

Mr. Claytor disclaimed all intention of offering any rudeness or indignity to the gentleman from Dinwiddie: on the contrary, the course he had originally chosen, was the very one pointed out by the gentleman from Charlotte, (Mr. Randolph.) He did not rise to prolong the debate, but only to vindicate his own conduct.

The Chair said, he had not understood the gentleman from Charlotte as having any personal allusion in his remarks.

Mr. R. disclaimed it entirely.

Mr. Johnson explained himself as intending to refuse no courtesy to the gentleman; but as having understood this as the mode of trying the question, whether the clause should remain or be stricken out.

After some farther explanation, the question was taken on granting leave, and carried: Ayes 50.

Mr. Claytor now moved to re-instate the clause—(so as to leave it discretionary with the Legislature, to vote for their own officers, by ballot or *viva voce*.)

And the question being taken, the votes as counted by the Chair stood, Ayes 44, Noes 43: but the Chair fearing some inaccuracy in the count, appointed tellers; and then the vote appeared: Ayes 43, Noes 46. So the Committee refused to re-instate the clause—thereby requiring all elections to be held *viva voce*.

The Committee then proceeded to the ninth resolution, which reads as follows:

"*Resolved*, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to

maintain their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

Mr. Brodnax explained this to be a literal transcript from the celebrated act drawn by Mr. Jefferson, and passed in 1785, for the freedom of religion.

He moved to amend the resolution by adding to the first member of it, a clause, declaring all persons who disbelieved in a God or a future state of rewards and punishments, as incapable of being received as witnesses in any Court of law in the Commonwealth. He did not himself consider such a clause absolutely necessary, as the same thing was virtually included in the resolution, or not contradicted by it: but it was best to add the clause by way of caution.

On the suggestion of Mr. Randolph, Mr. Brodnax withdrew his amendment.

Mr. Cooke moved to amend the second member of the resolution, by striking out the proviso (which disqualified ministers from being elected to the Legislature.)

Mr. Doddridge was in favour of the motion. He disapproved the election of ministers to a legislative body as much as most men; but he would not vote to prevent the people from making whom they would their Delegate to their own Hall of Legislation. He considered the exclusion as at war with the principle of the whole resolution: which allowed men to promulgate their religious opinions free from all political consequences; but the language of this proviso was—*unless they uttered them in the pulpit*, then they must be disfranchised.

Mr. Brodnax said, the gentleman from Brooke had forgotten the Hall of Legislation. Ministers might vent their opinions every where, and any where, but in that Hall. The gentleman from Brooke was commonly very felicitous in appealing to the example of other States, and sometimes carried that appeal farther than he was disposed to follow him. He believed, all the States in the Union went to the extent of this resolution, and many of them much farther. In the new Constitution of New York, which had been *lugged* in—(He begged pardon—which had been brought in most gracefully) into this debate, ministers were disabled from holding any civil office whatever. Mr. B. disclaimed all want of respect for the clergy, either personally, or in their clerical capacity; but there was a proper place for them; and that place was not in the Legislative Hall. He entertained, indeed, no fear as to a union of Church and State in this country. The fears of our forefathers, he believed, were well founded: but the progress of time, and the division of the Church into four, five, or six, he might almost say into four, five, or six thousand, different fragments, rendered that danger nugatory. This was the best and strongest of all guards on that subject. But there were numerous reasons which forbade the appearance of ministers of the Gospel in the political arena. It was totally inconsistent with their sacerdotal habits and sentiments; every power of their mind ought to be, and he believed, was, turned in different and opposite directions from temporal legislation. He adverted to the influence (not consciously indulged) of sectarian attachments, and its operation on all questions where the interests of a sect were directly or indirectly involved; and the influence of a minister over the numerous individuals attached to him—both of which were foreign to impartial legislation on his part or impartial judgment on theirs.

Mr. Doddridge assured the gentleman from Dinwiddie, that he did know the difference between the pulpit and the Hall of Legislation—having seen both more than once. But he still insisted on his former ground. The resolution declared, that a man's religious opinions shall not affect his civil capacities: but the proviso declares, that if those opinions are uttered in the pulpit, the utterance of them shall affect his civil capacities, even to disfranchisement. At the *polls* he should probably act with the gentleman; but why tie up the hands of the people?

Mr. Cooke considered it as at war with the whole spirit of our institutions, to disfranchise an entire class of our citizens, without any good reason assigned; a class too, which he considered far the most virtuous and efficient in the community. He insisted on the objection urged by Mr. Doddridge.

Mr. Coalter said, that it was precisely because he wished the clergy to remain what he now believed them to be, that he was against striking out the proviso. Their master had said that his kingdom was not of this world; he had commanded his servants to render unto Cæsar the things which are Cæsar's, and unto God the things which are God's. He had been himself willing to have nothing to do with politics, and his servants ought to have no more to do with them than He.

Mr. Brodnax, in reply to Mr. Doddridge and Mr. Cooke, observed, that a proviso, is, of course, something which involves a discrepancy and exception. It might be deemed very sinful in him to wish to exclude ministers, but he found himself, at any rate, in very good company. The exclusion was carried yet further than this by the old Constitution of Virginia. He called it the old Constitution: he knew it was spoken of very commonly now with great contempt; and perhaps he ought to beg pardon for mentioning it at all; but this old Constitution had been formed by men, not half so wise, to be sure, as they, (because, as the Committee had been informed

by the gentleman from Chesterfield, sons were younger, and of course wiser than their fathers,) but by men who had some little reputation in their day; and those men had said that ministers should not be eligible as members of the Governor's Council. He knew that the act on Religious Freedom was no part of the Constitution, but it had received universal sanction from the people of Virginia.

But Kentucky, Tennessee, and New York, while they had the same general provision on the subject of Religious Freedom, added besides this exclusion of the clergy from the Legislature: and in New York they are excluded from "any civil or military place or office whatsoever."

Mr. Cooke said, that on the ground of authority, he was not prepared; but he was informed that in eighteen States out of the twenty-four in this Union, ministers are admitted to a full participation in all civil and political rights with other men. He admitted, that the Constitution of Virginia did treat the clergy with not very high respect: but probably this arose from old habits derived from England, where the clergy were excluded from the House of Commons, because they had a House of their own.

Mr. Morgan said, there seemed to be but a single question to be settled; which was, whether the Constitution shall be so formed that the clergy shall be dispossessed of all modes of amassing power over the people. Now, there were two modes of effecting this object, either to exclude them from the Legislature; or to divest the Legislature of all jurisdiction whatever over the subject of religion.

If the Committee adopted the latter mode, there could be no necessity of resorting to the former.

Under the existing Constitution, their exclusion is *personal* only: the Legislature may give them any degree of patronage, and any amount of support, but not a seat in the Legislative Hall. But they now proposed to forbid the Legislature's granting them any aid or patronage, and, therefore he was for admitting them to a seat, if the people chose to elect them. He was in favor of striking out the proviso.

Mr. Moore was opposed to it. He thought any clergyman who offered himself as a candidate for a seat in the Legislature, shewed himself unworthy to be trusted anywhere. He considered their habits and studies as totally unfitting them for politics; and, in the last place, he owned that he was *afraid* of them. Keep them in their proper place, and there is no danger; but allow them to be connected with the State in any way, and you have the dreaded union of Church and State at once.

MR. RANDOLPH then said:

To me this is a most unlooked-for proposition. There is not one single article of my political creed, about which I have not a greater disposition to doubt, than of the propriety of excluding a class of men, dedicated to the office of religion, from the possession of political power. A gentleman told us, that but for the insertion of that proviso in the Constitution, he should be for excluding them from the Legislature. I would much rather vote to strike out the whole, and to leave the Constitution as it now stands; and for this plain reason: I am, and have been, and ever shall be, a practical man; and when I meet with legislative provisions of this kind, I rather smile at the fears which dictated them, than applaud the caution they exhibit. The Constitution is just as safe without, as with them. The Legislature of Virginia cannot, and if it could, it dare not, attempt such legislation as is forbidden in the body of this resolution. I feel myself perfectly safe. I find, somewhere else, a provision that we shall have no orders of nobility in this country. Who dreams that we ever can? Sir, when the time shall come that the people of this country are ripe for a union of Church and State, or for orders of nobility either, they will have them in spite of all the moth-eaten parchment in your archives. I fearlessly pronounce, that the admission of gentlemen of the cloth into your Legislative Halls is *ipso facto* the union of Church and State. Sir, are there no other considerations which weigh with us in altering? or in keeping the Constitution as it is? They are now excluded. Are there no other considerations? None that every well regulated mind belonging to the clerical profession ought of itself to suggest? I have had the pleasure (I was about to say I have had the honor, but the term would be misplaced) to be acquainted with many of them: with men of the most unaffected piety, of high attainments and great talents; and who, moreover, were clothed with that *humility* which is the Alpha and Omega of the christian character—Yes, Sir, its all in all: and I never knew one of them who dared to trust himself in such a situation. Not one, who if such an offer had been made him, might not justly have said, "lead us not into temptation." Sir, what are the offices of the clerical body? Do they not mingle with all classes of society? and above all, in the domestic circle? Is not their influence there paramount to that of all others? Is it not their duty to serve a master whose kingdom is not of this world? As well to reprove as to console?

Figure to yourself, Sir, a minister of the gospel of peace, about to reprove for his sins, a man of wealth and influence in his county; having, at the same time, a desire himself to represent that county. Sir, this is no exclusion on account of the profession of any

opinions. It is an exclusion of an occupation; of an occupation incompatible with the discharge of the duties of a member of either branch of the Legislature. The task of legislation is at war with the duties of the pastor. The two are utterly incompatible. Sir, no man can busy himself in electioneering, (and in these times who can be elected without it?) No man can mingle in Legislative cabals; I say no man can touch that pitch, without being defiled. No man can so employ himself, without being disqualified for those sacred duties which every minister of the gospel takes upon himself; and for which he is accountable, not to his constituents at home, but to the God who made him; and who will call him to a much more rigorous account than that he renders to his parishioners.

Sir, there is an indecency in this thing. We have heard much about exclusion of the ladies; but there is not greater indecency and incompatibility in a woman's thrusting herself into a political assembly and all its cabals, than in a clergyman's undertaking the same thing. One of the greatest masters of the human heart, and of political philosophy too, declares, that while the French are in their manners more deferential to woman than any other people, they have less real esteem for woman than any other nation on earth.

Let me illustrate this. The Turk shews that he values his wife, by locking her up; it is, to be sure, a mistaken mode: but he shews that he estimates the value of the treasure, by putting it under lock and key. The Frenchman permits his wife to mingle in political affairs; and if Madame Roland had not been engaged in such affairs, Madame Roland would never have ascended the scaffold. If women will unsex themselves; and if priests—(what shall I say?) will degrade themselves by mingling in scenes and in affairs for which their function renders them improper and unfit, they must take the consequences. If ladies will plunge into the affairs of men, they will lose the deference they now enjoy; they will be treated roughly—like men. Just so it is with priests. They lose all the deference which belongs, and which is paid to their office, (whether they merit it or no.)

Sir, rely upon it, if you permit priests to be made members of the Legislature, they will soon constitute a large portion of all your assemblies. And it has been truly said, that no countries are so ill-governed as those which were ruled by the counsels of women, except such as have been governed by the counsels of priests.

The question was now put on striking out the proviso, and decided in the negative; only twelve members rising in its support. (Mr. Madison being one.)

Mr. Brodnax now moved a further amendment, to be added at the close of the resolution, viz:

“Nor shall be so construed, as to deprive the Legislature of the power of incorporating by law, the trustees or directors of any Theological Seminary, or other Religious Society, or body of men created for charitable purposes, or the advancement of piety and learning, so as to protect them in the enjoyment of their property and immunities, in such case, and under such regulations, as the Legislature may deem expedient and proper. But the Legislature of this State, during all future time, shall possess the power to alter, re-model, or entirely repeal such charter, or act of incorporation, whenever they shall deem it expedient.”

Mr. Giles rose in opposition to the amendment, which he hoped would not be passed upon without due consideration. He then went into a series of observations on the injurious effect of the incorporating power, when the corporations were of a civil character, and much more when they were of a religious description. He considered their multiplication a serious evil which had already accomplished much mischief, and which threatened much more. They were bodies very irresponsible, and were gradually absorbing to themselves all the powers of the Legislature. He dwelt especially upon the injurious effects of Banks; and he hoped no sanction would be introduced into the Constitution, tending to encourage the Legislature in granting incorporations of any kind.

Mr. Brodnax spoke in reply. He agreed in the sentiments expressed by that gentleman, but contended that the amendment he had offered went to modify, and restrain, not to increase the evil. The Legislature had now Constitutional liberty to incorporate Theological Seminaries, and if once incorporated, their charters could not be altered or revoked, unless legally forfeited: But this amendment conferred on the Legislature, power to alter or amend their charters at pleasure. He spoke of the degradation of being obliged to send young men who were seeking, and who would get, and ought to get, a clerical education, *out* of the State to be educated. Two Theological Seminaries raised by Virginia capital, and supplied with Virginia students, had, through sheer necessity, been built and incorporated, *beyond* the limits of the State, because they could not be incorporated within it. He denied that the amendment gave any preference to one sect over another; and, as there would be a ministry in society, and that ministry must possess great influence, was it not better to provide the means of giving them a becoming education? As to the danger of Church and State, it was a chimera. Not *one-eleventh* part of the inhabitants of the United States,

were members of a church of any denomination whatever: and when it was remembered into how many various and incompatible sects, this small fraction was itself divided, all fears of any thing like a religious establishment in this country, must be acknowledged to be visionary in the extreme. He did not believe, that any one sect would wish, or accept such a distinction if it were offered to them: and sure he was, that if they should, all the other sects would be in hostility to them immediately. The experience of England on this subject, had taught a lesson which could never be forgotten. Union with the State was deadly in its effect on any religious denomination, and none in this country were so weak as to desire it.

Mr. Campbell of Brooke said, that every argument he had heard from Mr. B. went to prove the necessity of a religious establishment. For himself, he had no partiality for religious incorporations of any sort. He had, on the contrary, a great abhorrence to them in every form. He had many objections against them; but having heard no good reasons brought forward to prove that any advantage would attend them, (those hitherto used only professed to shew that they would be attended with no danger,) he should urge but one objection, and that was, that one feature of such institutions must be, to put it in their power to compel persons to the support of religion. If not, they were of no use; and all such compulsion was incompatible with the spirit of christianity. He, as a republican, should vote against compelling any person to support any ministry whatever.

Mr. Brodnax rejoined. The Reverend, or the *Right* Reverend gentleman from Brooke, has discovered an objection to his amendment, which, he confessed had never entered into his brain. He must certainly have been very unhappy either in the selection or the expression of his argument, if he had conveyed no better idea of his meaning. The Rev. gentleman said, he had pointed out no good consequence whatever, as likely to attend Theological Seminaries. He hoped they would, at least, have this good effect, to teach ministers of the gospel good morals and good manners. The gentleman had said, that such incorporations could be of no use, unless they compelled contributions to the support of their ministry: but could the gentleman forget that in the body of the resolution, such a power is expressly prohibited, not to a mere corporation, but to the Legislature of the State? a clause which had been introduced with the precise view to prevent that compulsion which some other States had sanctioned.

The question being now taken on the amendment, it was promptly negatived, twelve only rising in its favour.

The tenth and eleventh resolutions were passed over without amendment. They read as follows:

10. "*Resolved*, That no bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts, ought to be passed."

11. "*Resolved*, That private property ought not to be taken for public uses without just compensation."

The Committee then proceeded to consider the twelfth resolution, which is in the following words:

12. "*Resolved*, That the members of the Legislature shall receive for their services, a compensation, to be ascertained by law, and paid out of the public treasury, but no law increasing the compensation of members of the Legislature shall take effect, until the end of the next annual session after the said law may have been enacted."

Mr. Naylor moved to strike out the word "end" and insert in lieu thereof, the word "commencement."

Mr. Chapman of Giles, (who had introduced this resolution in the Legislative Committee,) explained the reason why he did not wish the amendment to prevail. Supposing a Legislature, sitting this year, to pass a resolution increasing the amount of the wages of a Representative: and supposing the people to be dissatisfied with what was done: when the Legislature meets the next year, they must meet under that law, and receive the extra compensation, until time should elapse to pass a bill to repeal the law. This he was desirous to avoid; and in order to avoid it, he would not have the law take effect, till the end of the session. Then there would be ample leisure to consider the subject, and to introduce, mature, and pass a bill for the repeal, if it should be deemed advisable.

Mr. Naylor thought this was an excess of caution; it was looking too far ahead to legislate at the distance of two sessions off. If the people shall be dissatisfied, according to the case put by the gentleman, the remedy is easy. Let there be an understanding that the extra wages shall not be received.

The question being put, the amendment was negatived. Ayes 37, Noes 50.

The thirteenth resolution, which is the last reported by the Legislative Committee, was then passed by without amendment. It is in the words following:

"*Resolved*, That no Senator or Delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which

shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people."

Mr. Doddridge now moved to take up the second resolution, (on the subject of the census,) but after some conversation as to the next subject to be considered,

Mr. Nicholas moved that the Committee rise: the motion prevailed. Ayes 44, Noes 42.

The Committee rose accordingly.

Mr. Mercer moved a resolution, which was referred to the Committee of the Whole, viz:

"*Resolved*, That all taxes on lands, slaves, and horses, shall be founded on a fair assessment of their value, that no one of these subjects shall be taxed separately from the other two, and that when taxed, the same rate shall be charged and levied upon all."

Mr. Doddridge moved to take up the second resolution *about the census*; and then proposed the following substitute to his former proposition:

Second resolution, second line, after "taken," strike out to the end of the resolution, and insert "in the year 1835, and in every tenth year thereafter, and upon every such census being taken, and also upon the next census taken under the authority of the United States, a new apportionment of Representation shall be made, according to the principles declared in the foregoing resolution, (if the state of the population shall have so changed, as to render the same necessary,) and upon every apportionment hereafter to be made, there shall be a new assessment of lands for the purposes of taxation."

Mr. Massie then moved that the resolution proposed by Mr. Gordon be printed for the use of the members; and Mr. Goode made a similar motion respecting Mr. Doddridge's amendment in relation to the census; and the printing was ordered accordingly.

And thereupon the House adjourned.

THURSDAY, NOVEMBER 26, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Douglass of the Presbyterian Church.

On motion of Mr. Mason, the Convention passed an order, authorising the Committee of the Whole to have such printing executed, as they might judge conducive to the dispatch of the public business; and then,

On motion of Mr. Macrae, certain documents were ordered to be printed.

The House went into Committee of the Whole, Mr. Powell at first, in the Chair; but, his voice being impaired by a severe cold, he soon after requested Mr. P. P. Barbour to take his place as Chairman.

And the question being on the following amendment offered by Mr. Doddridge, to the second resolution of the Legislative Committee:

Second resolution, second line, after "taken," strike out to the end of the resolution, and insert "in the year 1835, and in every tenth year thereafter, and upon every such Census being taken, and also upon the next Census taken under the authority of the United States, a new apportionment of representation shall be made, according to the principles declared in the foregoing resolution, (if the state of the population shall have so changed, as to render the same necessary,) and upon every apportionment hereafter to be made, there shall be a new assessment of lands for the purposes of taxation."

Mr. Johnson objected to the amendment, and stated the expense which would have to be incurred, if an assessment was made every five years, (reckoning the State and Federal Census:) he referred to a statement from the Auditor's Office, for the expense of the last assessment of lands, to shew that it cost \$51,399 94. This would occur every ten years, in addition to the cost of the Census. He concluded with a motion, that this resolution be, for the present, passed over, which was carried.

The fifth resolution, which is in these words, was also passed by:

"*Resolved*, That the number of members in the House of Delegates, ought to be reduced, so that the same be not less than one hundred and twenty, nor more than one hundred and fifty."

The Committee then proceeded to take up the sixth resolution, which reads as follows:

"*Resolved*, That no person ought to be elected a member of the Senate of this State, who is not at least thirty years of age."

Mr. BAYLY moved to amend the resolution, by striking out the word "thirty" and inserting "twenty-five."

In support of this amendment, he addressed the Committee as follows:

Mr. Chairman,—I cannot agree to the resolution which requires the age to be longer in the Constitution we are endeavouring to make, than in the old Constitution, without very strong reasons to justify the change. For, although we have heard very many and great complaints from various parts of the State against the Constitution, in most parts of its organization, yet I have never heard a whisper of disapprobation from any portion of the Commonwealth, or from any man, that the Senators were not of sufficient age at twenty-five. It seems to me, that this part of the Constitution, heretofore, has been considered by all, free from exception, until we have met in Convention, and an imaginary evil is now supposed to exist. And yet gentlemen, who are very unwilling to make, and resist with all their force and power of argument, any and every change in those very great defects in the Constitution which have compelled the people to convene this Convention to remove, seem determined to change some of those parts of the Constitution which now place no restraint upon the people. But, such parts of the Constitution as the people have demanded shall be so altered or amended, whereby they shall have greater power in the Government than they have heretofore possessed, are to remain unaltered and unalterable, and a strong limitation put upon their right of electing the man of their choice, who they desire to be their representative, and upon the supposition that they cannot distinguish between the merits of old and young men; the young man without experience, and the old man who has not profited by experience.

Has a single or solitary instance been quoted, where the Commonwealth has received any injury from the very numerous number of young men of great merit and promise, which the people, the freeholders, have introduced into their two Houses of General Assembly, that thereby in early life, they may acquire those useful and necessary accomplishments, which will in due time fit them for the Councils of the Union? The people are to be restricted from selecting a man under thirty years of age, to deliberate with grave Senators, who will be quick to correct any error which will lead him from his duty; but should his aged companions in the Senate, not restrain the youthful Senators of twenty-five years from doing wrong, his constituents will, at the next election, apply the corrective. You add restriction upon the people when they elect or appoint to office, but when the General Assembly or your Executive elect or appoint to office, no restriction will then be met with in your Constitution. Your Judges, your Generals, your Auditor, Treasurer, and all the host of civil and military officers, will be created without the requisite of any qualification of age: I might add your Councillors of State; but they are dead, and nothing but a miracle can bring to life. The only cases where age will be required as a qualification to office, is, when the people choose; then they are to be restrained in their election, to members of the General Assembly, and in the election of the Governor, who is to be thirty years of age and elected by the people, as *seems* to be at *this time* the determination of the Convention, which I hope and trust will be adhered to.

When we consider the reduction we are making of the number of Legislators, and that half the counties which heretofore have been privileged with two Law-givers, will hereafter only have one, it may readily be supposed that they will be more solicitous upon whom their choice will fall, and will select their brightest man, be he young or old. A majority of the States finding no evil resulting, from permitting their young men early in life to enter into their service in deliberative assemblies, have required the age of twenty-one for a Representative, and twenty-five for a Senator; and some of these modern Constitutions may have been copied from the Virginia Constitution, which is not only the oldest written Constitution of any of the States of this Confederation, but it is believed it is the oldest written Constitution of Government in the world. Why then shall we change this feature which has been approved? Sir, the people *may, can, and ought* to be trusted, to select without restriction as to age after twenty-five, whosoever they wish to be their rulers. It will not do so often to say, that the citizens of Virginia are so virtuous, wise and independent in voting *viva voce* for their agents, and yet restrain them from promoting their interest by selecting a rising genius of great expectations to advocate their rights. By this resolution, you compel them to turn away from a man who has every qualification except age, to another who has no other qualification. But, Sir, so far from this provision producing mischief, and I think it has produced none, for none has been stated or complained of, it has produced much good. Soon after the age of twenty-one, the three venerable gentlemen who stand at the head of this Convention, (Ex-Presidents Madison and Monroe, and Chief Justice Marshall,) entered into the service of Virginia: to these I may add the gentleman from Norfolk, (Mr. Tazewell.) Another gentleman from Norfolk, (Mr. Grigsby,) in this Convention, is not now twenty-three years old, and yet he has been twice elected by the citizens of that Borough, to represent them in General Assembly. I may mention the names of many more illustrious citizens of Virginia to justify my motion; one more I will refer to, the gentleman from Charlotte, (Mr. Randolph,) when elected to Congress, it was supposed he had not acquired the age of twenty-five years, (which I believe was the fact,) and when called

upon to take the usual oaths in the Hall of the Representatives of the Nation, the Speaker demanded as by authority, "*Sir, are you twenty-five years old?*" The reply of the young Statesman struck him dumb: "*GO AND ASK MY CONSTITUENTS;*" and that was the proper reply. His constituents were the rightful judges of his qualifications, and if that gentleman had studied from that to this time, for an answer more proper to have been given, he would not have succeeded.

A newspaper I have received this morning, gives the ages of the fifty-six illustrious men at the time they signed the Declaration of Independence of the United States.

Edward Rutledge was twenty-six years old, Thomas Lynch, jr. twenty-seven; Thomas Heyward, jr. thirty. These three, the youngest of the fifty-six, were from South Carolina. Benjamin Rush thirty; Elbridge Gerry thirty-one; William Hooper thirty-one; Thomas Stone thirty-two; Thomas Jefferson thirty-three; James Wilson thirty-three.

It is not probable, that the first entrance into public life of these men, was in that glorious Congress, and I may safely presume, that they had often been chosen by their countrymen, to fill public stations, before they were selected for that great and trying occasion.

William Pitt the younger, who is considered by Englishmen, the wisest Minister England ever had, took upon himself the government of that wonderful people, at the age of twenty-two or twenty-three, and sustained himself against every opposition, for twenty-three years, and until his death.

Taking the example of our own and other States and countries, it does appear to me, that the restriction upon the people which we are about to impose in choosing their Representatives, is not necessary, and therefore I have made the motion.

MR. JONES addressed the Committee, in substance, as follows:

MR. CHAIRMAN,—The resolutions relative to the ages of Senators and Delegates, having been adopted in the Legislative Committee on my motion, it may, perhaps, be expected of me to state the reasons which induced me to propose to change the provisions of the present Constitution on these subjects. I confess I do not regard it as a matter of *very great importance*, that Senators should be thirty, rather than twenty-five years of age; but there are several considerations which induce me to prefer thirty as the age of Senators. There is no general rule without exceptions; and I admit, that one of the greatest Statesmen England ever produced, was Prime Minister of that Kingdom at much less than thirty years of age. And our own country has produced some splendid examples of very early developments of great powers of mind. Some of the greatest orators the world has ever known, have attained very high distinction before the age of thirty; but these exceptions do not disprove the propriety of the proposed change.

It is not enough to fit a man for the duties of a Senator, that he should be a man of brilliant genius, or great powers of eloquence; but it is necessary that he should possess a maturity of judgment, and a knowledge of the Constitution and laws of the State, which very few young men possess. It is proposed that the Senate should be retained at its present number of twenty-four members; and a bare majority being necessary to form a quorum, the votes of seven members (which is a majority of a majority,) will be sufficient to enact or repeal the most important laws. The territory of Virginia, from its extent and fertility, is able to sustain more than twice the number of its present population; and with this increased population, and from other causes, it may reasonably be expected that new interests will spring up, and whatever may be the increased population, and however diversified may be the interests of society, it is proposed forever to limit the number of Senators to twenty-four.

In addition to the ordinary powers of legislation, it is proposed in the Convention to confer new and important powers on the Senate. It is proposed, to give to the Senate the power of trying all impeachments—to give it a *concurrent* vote with the House of Delegates in the appointment of all important officers of the Government, or to constitute it as a Council, by whose advice and consent, the Governor is to make such appointments; and it is also proposed to give to the Senate and House of Delegates, by *concurrent vote*, the power of removing Judges from office. All these important powers to be exercised by twenty-four men, it seems to me, require that these twenty-four men, should be men who possess great wisdom and experience, and that maturity of judgment and discretion, which age alone can give.

But, MR. CHAIRMAN, there is another consideration which it appears to me, is entitled to some weight upon this subject. Although I ardently hope that the Union of these States may be perpetual, yet in modern times, a *dissolution of the Union* is so frequently spoken of, that there is some reason to apprehend that *that* is not merely a possible event. If such a catastrophe should ever happen to this confederacy, the Legislature of Virginia, will not then, as at present, be confined to legislation for the internal concerns of the State, but other new and important duties will devolve upon them in reference to the connexion of Virginia, with the great family of nations. Such

important duties as would then devolve upon the Legislature, ought not to be performed, except by the wisest and most experienced of the sons of Virginia.

It is said, that the people may be safely trusted on this subject, and that they are the best judges of the fitness of candidates for office, and that there is no danger of their electing a man to the Senate who is not well qualified for the station. I should be the last man to question the competency of the people to decide upon the qualifications of candidates for office; or to impose any improper restrictions upon the exercise of their discretion; but the arguments of gentlemen upon this subject prove too much. The restraints imposed by a people upon themselves in their fundamental laws, are restraints imposed by them for their own benefit. If *no restraint* should be imposed upon the right of selection by the people, why do gentlemen propose that Senators should be *twenty-five* years of age? Why not trust the people to elect Senators at twenty-one years of age? Nay, Sir, even less than twenty-one; for, I dare say that *some young men might be found* even under twenty-one, who would, *possibly*, make good Senators.

The same argument would apply with equal force to the Constitution of the United States. The wise men who made that Constitution, required the President to be thirty-five, Senators thirty, and Representatives twenty-five years of age; and the Constitution having been adopted by the people, shews that they approved of those limitations on their own discretion. The united voice of the people of the United States would not be sufficient to elect to the Presidential Chair the most distinguished man in the nation, unless he were thirty-five years of age. Why not remove all these Constitutional restraints, and confide to the discretion of the people and to the State Legislatures, the power of electing a President, Senators and Representatives, of whatever ages they choose? The people of other States have thought it wise to impose limitations upon themselves in their Constitutions upon this subject. In four of the States, Senators are required to be thirty years of age, in one twenty-eight, in four twenty-seven, in one twenty-six, and in all the rest of the States, twenty-five years of age are required. In two of the States, Representatives are required to be twenty-five years of age, in three twenty-four, and in one twenty-two.

But, Mr. Chairman, I consider it much more important to require Delegates to be twenty-five, than Senators thirty years of age. Between the ages of twenty-one and twenty-five, young men ought to be engaged in study, and in preparing themselves to become members of the Legislature; and the observation of every man who has been a member of the House of Delegates, I am sure, has furnished him with opportunities of seeing young men under twenty-five years of age in that House, who had not sufficient experience and judgment to fit them to be Legislators.

I know that some gentlemen are opposed to changing the existing state of things, unless great practical evils have resulted from them. Innovations upon established regulations on important subjects, I admit, ought to be cautiously made; but in the proposed changes, no possible danger can arise. If the proposed changes would exclude some young men well qualified, they would also, probably, exclude more who had not sufficient experience for the important duties of legislation; and those who were qualified, would be still better qualified, after a few more years devoted to the acquisition of knowledge and experience.

The question being taken, the motion of Mr. Bayly was negatived—Ayes 37, Noes 45. (Mr. Marshall *Aye*, Messrs. Madison and Monroe, *No*.)

The seventh resolution was then read as follows:

Resolved, That no person ought to be elected a member of the House of Delegates of this State, who is not at least twenty-five years of age."

Mr. Henderson moved to amend it, so as to make the age of a Delegate twenty-one instead of twenty-five.

Mr. Doddridge opposed the motion, and it was lost—Ayes 37. (Mr. Madison among the Ayes.)

On motion of Mr. Mercer, the Committee then proceeded to the consideration of the report of the Executive Committee.

The first resolution having been read as follows:

Resolved, That the Chief Executive Office of this Commonwealth, ought to be vested in a Governor."

Mr. Doddridge moved the following amendment:

"To be elected once in every three years, at the time of the general annual elections, by the persons qualified to vote for the most numerous branch of the General Assembly."

Mr. Henderson moved to amend Mr. Doddridge's amendment, by inserting the words "most numerous branch of," which was accepted by Mr. D. as a modification.

Mr. Leigh moved to amend the amendment by striking out the words after "elected," and inserting "to be elected by the two Houses of the General Assembly."

Mr. Leigh said here was a proposition of the Legislative Committee to elect a Governor. The second resolution is to abolish the Council. The proposition of the

gentleman from Brooke, is to give the election to the qualified voters. If this amendment were rejected, the Constitution would stand as it now stands. He wished to know if such be the fact.

At the suggestion of the Chair, who said that if no proposition to amend were carried, the Constitution would remain as it was, Mr. Leigh withdrew his motion to amend.

Mr. Leigh then called upon gentlemen for some reasons, founded on practical views, for the change they required. Upon them was the *onus probandi*.

Mr. Powell regretted that the state of his voice prevented him from taking the course which he otherwise would, by presenting the amendment which he had himself moved to this whole report. Mr. P. then moved to pass by the resolution, and to take up the other reports.

Mr. Doddridge said he did not know that the gentleman from Chesterfield had any right to call upon him to answer interrogatories. It was a practice growing upon the Convention. He had been a few days ago charged with being cognizant of a motion in the House of Delegates, when he was not a member of that branch, but he was not permitted to explain, and to deny that he was a member; and the gentleman then proceeded to ask him questions as to what he would do in certain cases. He denied this right, and declared that he was at liberty to address the Committee on the subject of his proposition, or to submit it to a silent vote. He suggested to the gentleman from Frederick, to permit the question now to be taken on the report, and reserve his argument for a future stage of the proceedings.

Mr. Powell persisted in his motion, and gave the reasons which induced him to view the election of the Governor, as the most important question which was likely to arise in the consideration of this report.

Mr. Mercer said that as it was at his instance, the report of the Executive Committee was taken up, he felt it necessary to make a few observations, with respect to the motion made by the gentleman from Frederick, (Mr. Powell). If he thought that the gentleman from Frederick, from his present indisposition, would do any injustice to the advocacy of the substitute which he submitted, for the Executive report, he certainly would not press the decision at the present time. But if that gentleman would reflect and perceive the converse of his argument, he would find that we were involved in the same difficulty from which he wished to extricate himself. On this principle we cannot proceed one step; we cannot move at all. It was objected the other day when it was proposed to take this report under consideration, that it would be improper, until we had settled the whole basis of Representation. There is no report, which does not, in part, involve in its consideration, that of another report. The Executive depends on the Legislative, and the Judicial on both the Legislative and Executive Departments. We cannot decide any proposition separately: every question is argued hypothetically in the Committee, and inferences are drawn in this manner. Suppose the Executive power is to be enlarged, then we are to consider the expediency of vesting the power of appointment in the people; if the Executive powers remain as they are, then we must consider whether he is to be appointed according to the present Constitution. At last when we have settled the question in the Committee, we then go into the House, with a full knowledge of the whole principles of the proposition, and we can vote and decide, not hypothetically. If then it was decided, that the Executive is to be elected by the people, he would vote to give him powers to act independently of the Legislature. If the Executive was made the creature of the Legislature, he would regulate his vote accordingly. He said the gentleman from Frederick, would have an opportunity to offer his substitute hereafter. The Executive report will be open to amendment: he hoped, therefore, he would withdraw his motion, so that the report might be considered.

Mr. Leigh asked, if it was or was not parliamentary, to ask of the friends of a proposition to give their reasons for it.

The Chair said there was no parliamentary rule on the subject. The only rule is to avoid personality, and imputation of motive.

Mr. Leigh said, he was sure he had attributed no personal motive. He asked the gentleman from Brooke, if he supposed, he had any authority for carrying a proposition through the House, without assigning any reasons, or, if he had a right to take offence against any one for requiring reasons? He wished to know, if it was to be expected that a system which has all the sanctions of time in its favour, was to be at once changed at the suggestion of the gentleman, without any reasons being assigned. He had thought our object was to compare our reasons, and he was willing to meet the consequences of any change of reasons. When he submitted a proposition, he considered himself required to state any reasons without any specific call.

Mr. Doddridge wished to say one word. The gentleman from Chesterfield had made an amendment to his proposition, and before he sat down, seemed to call on him in a somewhat peremptory manner. He stated that he was as little disposed as any

man to look at the conduct of any one in an unfavourable view; and was as ready to make this explanation to the gentleman from Chesterfield, as to any gentleman. He said, that as this proposition was to be submitted to the people, and the subject had been sufficiently discussed, he had a right to leave the question to be taken, without giving any reasons.

After an explanation from Mr. Leigh and Mr. Doddridge, Mr. Powell withdrew his motion to pass by the proposition.

Mr. Doddridge said, he would now assign his reasons for the proposed change in the Executive, and he would do so, without adverting to any of the existing abuses in its constitution. In the first place, he objected in theory to its power of appointment, as sufficient to show that the Executive Department should undergo a new organization. If we are agreed on any one principle which has been discussed amongst us, it is that the Executive, Legislative, and Judicial Departments of the Government, should be separated, and that the duties of neither should be exercised by another department. This, with some exceptions, would be admitted as a general rule.

What is the Executive of Virginia? It is nothing more nor less, than an emanation of the Legislative power. He is appointed every year, and is responsible, only to those to whom he is looking for a re-appointment. And the Executive Magistrate by an interpretation of the Constitution, has been deprived of all Executive power. By a construction which was given to it, in the time of General Wood, it was decided, that when the Executive Council was divided, the Governor had no power to give a casting vote. This was the prevailing doctrine to the present time. The Governor requires no other qualification, than to be a gentleman, to be enabled to fill his office. All he has to do, is to write his name when commanded; and not till he is commanded by the Executive Council, can he do so. He is the creature of the Legislature and not of the people, and he is responsible to the Legislature alone, except when the process of impeachment is resorted to; and from the tenure of office, it would be useless. He understood from the Notes of Mr. Jefferson, that the Executive was nothing but an emanation of the Legislative power. He had not the Notes here now, but he had read them so often, and they made such an impression on him, that he could readily give their substance. Mr. Jefferson proved, that the Executive was not a co-ordinate branch of the Government; that it was not responsible to the people. The conclusion was, that the Executive power resulted in the Legislative body. It was asked had the Judicial body a sufficiency of independence. Their tenure is, *quam diu sese bene gesserint*. This did not make a Judge independent, because after providing an adequate salary, the words, "which shall not be denied during the continuance of office," are omitted.

The Legislature could thus starve a Judge out of office. The Judiciary is in fine dependent on the Legislature. What are the words of Mr. Jefferson? "When all the powers of Government, Legislative, Executive and Judicial, result to the Legislative body, and the concentration of them is in the same hands, it is a precise definition of despotic power." Independent of this authority, is it not so in fact? What can prevent the Executive Council from doing an unpopular act, since they are not farther accountable to the General Assembly, and have no motive to induce them to act properly, except that the General Assembly may not re-elect them?

Another defect is, that effectually and efficiently they are in no manner responsible. In the Council, which consists of eight members, unless there is a majority on every question, the Governor has no responsibility. The Executive Council is periodically removed, not appointed, and this was a most odious and disgusting office. Two of the eight must go out, and this circumstance creates amongst them a disposition to electioneer in the General Assembly against each other. The result is, the dishonour of him who is removed from office.

Among the complaints which brought this Convention together, and which were published in the Gazettes of the country, was one against the Executive. After the extension of the Right of Suffrage, what the people next desired, was the establishment of an independent, responsible Executive. If the Executive Council be abolished, the Governor will be responsible for whatever abuse may be committed, and there will be no necessity to refer for the Ayes and Noes to the Executive Council book. The objections against the Executive, would come with greater force, especially if he be invested with the power of making appointments.

The objection, therefore, to the constitution of the present Executive, is, being an emanation of the Legislative body; as lacking independence, and, as not possessing the power necessary for the Executive of any country. He would not go further in his argument. It was said that no abuses existed; that none had taken place under the present system. He was not prepared to go into this subject; yet all had not given satisfaction. Many of the appointments have given dissatisfaction; there have been many made independent of, and against the nomination of the county courts. There was another subject which he had omitted to mention. An increase of power has devolved upon the Executive by an enactment of the Legislature. He referred

to the administration of the Literary Fund, and of the fund for Internal Improvement; the distribution of which the Executive possesses, not in virtue of any constitutional power it enjoys in this respect, but by an enactment of the Legislature. The consideration surely shews the necessity of there being a greater responsibility on the part of the Executive. He had briefly and imperfectly assigned his objections to the present system. As to the power of impeaching the Executive, it was futile. We were not an impeaching people. There was but one impeachment which ever took place here, and that was made at the request of the gentleman himself. But as to the impeachment of a Governor, whose tenure of office is but one year, it was useless, as his time would expire before the impeachment could be effected.

Mr. Morgan said, he would suggest an amendment to his colleague, to strike out the word "three," and leave a blank. He had intended to vote for the appointment of the Executive by the Legislature, if the election was made annually. His reason for making this motion was, to have the most responsible Executive in the United States, which he thought would be thus attained. The blank may be again filled with "two," or with "three," if the Committee prefer the latter number. For himself, he preferred that the appointment should be made every two years, if the Executive is to be elected directly by the people; but if by the General Assembly, he preferred an annual election, as the Executive was thus held as a tenancy from year to year, and therefore more responsible. An annual election by the people would be inconvenient; an annual election by the Legislature, constituted as that body now is, he would never consent to. He would move that the word "three" be stricken out.

Mr. Doddridge accepted the modification proposed by his colleague.

Mr. Morgan said, he would further remark, that he was opposed to the augmentation of power in the Executive branch of the Government. It was dangerous. He thought the weakest Executive in the world to be the best. It was the safest. No original good whatever can result to the people from the power of this branch. It is the business of the Executive to see that the laws shall be faithfully executed. All good resulting from Government to the people, must originate and come from the Legislature. It can originate no where else. But so far as the Executive is concerned in the execution of the laws, there ought to be a high responsibility. He would vote for the amendment, but against every thing calculated to augment Executive power or influence. He wished to keep that branch feeble.

Mr. Doddridge accepted the motion as a modification of his amendment, so as to leave the term of service blank for the present.

MR. NICHOLAS addressed the Committee as follows:

It appears to me, Mr. Chairman, that we are passing over vital interests, rapidly, and without due consideration. This is one of the most important branches of the Government, and a sense of duty impels me, to state the result of my reflections on the subject. There is also, a relation, in which I stand to this question, which renders it proper that I should address the Committee. I had the honour to submit to the Executive Committee, of which I was a member, a proposition relative to the Executive Department; which since, with the consent of the Convention, was laid on the table, and referred to this Committee. I have announced my intention, to submit it as a substitute for a part of the report of the Executive Committee. The resolution now before the Committee, is limited to the declaration, that the Governor ought to be elected by the people, instead of the Legislature. But there are other matters connected with the organization of the Executive Department, which have been already adverted to in debate, and which, in truth, will have an important bearing on the question now before the Committee. The proposition I submitted, was, that the ninth and tenth sections of the Constitution should be retained, and that the eleventh should be substituted by a new section, which provides for retaining four members of the Council, one of them to be chosen and act as Lieutenant Governor; half the Council to go out at the end of two years, the other two at the end of four, so that though the members are to be re-eligible, it shall be in the power of the Assembly, if necessary, to renovate half the body once in two years. It is also proposed to abolish the present mode of ejecting members from the Council, and to allow them salaries, moderate but adequate.

It is stated by the gentleman from Brooke, (Mr. Doddridge) that one object of calling the Convention, was to abolish the Executive Council. I do not know what other gentlemen's constituents may think on the subject, but I believe mine have expressed no opinion on the matter, and I feel myself free to consult my own views of what is right and proper.

I admit, that I have my fears, that any attempt that I may make to defend the Council, will prove fruitless, because many seem to entertain strong prepossessions against it. But this will not deter me from doing my duty, in endeavouring to demonstrate, that the public interests will be promoted, by preserving this branch of the Executive, under certain modifications. Whether the Council ought to be abolished, depends upon our ideas, of what are the proper characteristics of the Executive De-

partment. I take it for granted, that every gentleman would think it proper, to construct the Executive Department on principles suited to republican institutions. The Government from which we were separated by the Revolution, was one which concentrated inordinate authority in the hands of a single Executive Magistrate. The monarch had the powers of war and peace, was the fountain of honour and office, and could increase the House of Peers, who are a body of hereditary nobles, to an unlimited extent. Look at the preamble to your Constitution, which enumerates the causes which induced our ancestors to separate from Great Britain, and you will see, that our revolution was to a great extent, founded on the tyrannical and oppressive exercise of the vast powers and prerogatives of the British King. Smarting as our ancestors did, under what they declared to be "a detestable and insupportable tyranny," it was natural as well as proper, that in the Government they were about to establish, they should endeavour to conform the structure of the Executive Department to the genius of a Republic. But, now, we are about, it would seem, to depart from these principles. We are to have a splendid Executive. It is contemplated to vest this authority in a single magistrate; and the appointment to all offices in the gift of this Department, is to be given to him, as some contend, without controul, and as others maintain, with no other check, save the power of rejecting his nominations by the Senate. I am not prepared for this. The gentleman from Monongalia, (Mr. Morgan,) says he is for a feeble Executive. This is not precisely the phrase I would adopt. I wish the Executive to have power enough to execute the laws and no more. I would not invest it with splendor, or extensive patronage, or make it the mark, or instrument of inordinate ambition. Our Executive as at present constituted, is simple and unostentatious. Your Governor is nothing more than a citizen called upon, temporarily, to execute the laws; this done, he returns to the level of the great body of the people. Whilst in office, he has with the advice of the Council all the power which is necessary to give efficacy to your Government. What more can be desired? If you invest all power and extensive patronage in a single magistrate, you create a petty monarchy. The gentlemen who are on the other side of this question, admit the propriety of interposing checks to prevent the abuse of power in the other Departments of Government; but the framers of our Constitution felt that these checks were equally, indeed, more necessary in the Executive. The check they interposed, was the Executive Council. This is a constitutional body, not dependent on the Governor.

The President of the United States has enormous powers and patronage, and he has no constitutional Council. The Constitution authorises him to call for the opinion of the principal officer, in each of the Executive Departments, upon any subject relating to the duties of his office; and usage has erected these officers into what is called the Cabinet. But there is all the difference in the world between such a body, and a Council organized as ours. These Executive officers hold at the will of the President, and he can act without, or contrary to their advice. The Governor can do no important act, without the advice of Council. They not only know his acts, but they understand the motives and secret springs which set these acts in motion. If you entrust power to one man to act in the dark, and without the possibility of determining his motives, you give facilities and temptations to do wrong, you enable him to indulge a spirit of favouritism, and to confer offices, in promotion of objects of personal ambition.

By a constitutional Council, you superadd to the responsibility of the Governor, the means, if not of preventing the formation of improper schemes, yet of their being carried into effect.

But, it is proposed to give the election of Governor to the people. It seems to me, that the power is essentially exercised by the people, when carried into effect by their immediate representatives. Both the Governor and the members of the Legislature are elected for short periods, which constitutes a sufficient security for the proper exercise of this power of appointment, by those to whom the present Constitution has entrusted it. This is one of those selections for office, which can be best exercised by intermediate agents. It is impossible that the candidates for Governor, can be known but in a very few counties of the State. But, to the members of the Legislature, who are on the scene of action, all the public men of the State, who would be fit for the station, would be known, and they could make the best choice. If the Governor is to be elected by the people at large, they must depend upon the representations made to them of the characters of the candidates. The persons who may make these representations, will, in effect, control the election. In the one case, then, the elections would be made by the representatives of the people, acting under a sense of duty and official responsibility; in the other, by the influence of heated and interested partizans.

But it is said, that the creation of a single Executive magistrate, and vesting his choice in the people, will increase responsibility. Strange, that a large increase of power, and the investiture in a single hand, should have that effect. It is further

said, that the existence of the Council destroys all responsibility in the Governor. This is not so. The Governor cannot act without the advice of Council, and that advice is to be spread on their journal, signed by each member, and laid before the Legislature when required; besides, any member may enter his protest. The Governor and Council then, are both responsible; the former for following, or not following their advice, and the latter for that which they give. I beg gentlemen before they adopt a system which gives all power and patronage to one man, and the election of him to the people, to turn their eyes to the operation of this system in our sister States. Look at New York, Pennsylvania and Kentucky. It appears from the debates of the Convention in New York, that before the recent change in her Constitution, about eight thousand offices, were in the gift of the Executive, including militia appointments, prothonotaries and a multitude of smaller offices. Whenever the election comes round, in some of these States, the community is convulsed to the centre. Every man is made an office-hunter and dabbler in elections. As soon as a new Governor is elected, all the incumbents in office go by the board. And then begins a new struggle, so that the State is kept in continual ferment and agitation. The inevitable effect of these systems is, not only to destroy the peace and happiness of the people, but to undermine their political morality. Under our plan, the machine of Government works so smoothly, that whilst our Executive possesses power all-sufficient to execute the laws, no sensation is felt on the change of the Chief Magistrate, and it is not unlikely that many citizens of the State are frequently ignorant who the Governor is, unless he happens to be a man who has acquired distinction in other political stations.

But it is objected by the gentleman from Brooke, (Mr. Doddridge,) that in giving the election of the Governor to the Legislature, you violate that valuable political maxim, which requires the different departments to be kept separate and distinct. If the gentleman will advert to the forty-seventh Number of the Federalist, in which this subject is discussed, he will find that the true meaning of the maxim laid down by Montesquieu, is "that where *the whole power* of one department is exercised by the same hands which possess *the whole power* of another department, the fundamental principles of a free Constitution are subverted." And that he did not mean, "that these departments ought to have no *partial agency* in, or no *controul* over, the acts of each other." And this Number also demonstrates by reference to the British Government, and the Governments of the different States (to which may be now added, that of the United States,) that it is extremely difficult, if not impossible, to prevent the powers of one department from running into those of another. Besides, how does the power of appointment of Governor, confer on the Legislature, Executive power in the sense in which the maxim before quoted, can alone apply? As well might it be contended, that the appointment of the Judges, confers on the Legislature, Judicial powers.

But the gentleman from Brooke, says the Governor has no power; he is a mere cypher. I do not think so. He is not bound to obey the advice of the Council. It is true he cannot act without their advice, but he can, after they give it, execute it or not, on his responsibility. This is the uniform construction which has been put on the Constitution. Besides, my plan proposes, that when the Council is divided, the Governor shall have the casting vote. How does it appear, that the Governor and Council have not adequate power? Have they not the power to execute the laws? And have not the laws been always executed? Why give them more power? It can only be necessary to confer splendor and patronage. The powers of the Executive are very considerable. It must be so in every Government in a State as large as this. The power of executing the laws must always be commensurate with the legislation of a country. They have the power of appointing magistrates, sheriffs, all the militia officers, and many others, and the power of filling vacancies in various offices during the recess of the Legislature. They have also a general superintendence of all the departments, subordinate to them, the Treasurer's office, those of the Auditors, the Penitentiary, to which may be added, the Boards of Internal Improvement and the Literary Fund. Can any one man discharge these various important duties? In the exercise of the power of appointment, can the Governor possess the local information, or the knowledge of men dispersed over this great State which would enable him to make proper selections? With a Council of four, elected with any reference to this object, he would have always at hand, the means of making a judicious choice.

There is one power vested in the Executive, which I should be unwilling to confer on any individual. I mean the power of pardon. Is there any gentleman here, who is willing so to invest this power, which may involve the liberty, and even the life of any citizen of the land? There is no man, however elevated, however prosperous, however virtuous or circumspect, such is the frailty of our nature, and such are the accidents and vicissitudes of life, who may not either in his own person, or that of his connexions, have a deep interest in the exercise of this power.

The idea advanced by some, that the Council may be dispensed with, by taking the advice of the Treasurer, Auditors, and some other officers of Government, is not, in my mind, one which can be sustained. The objects for which these officers are selected, are entirely distinct, and they may require different qualifications. But what seems conclusive, is, that these officers are under the supervision, and to a certain extent, the controul of the Executive, and have already laborious duties to perform, which occupy all their time. It is the opinion of others, that we should conform our Executive to the model of that of the United States. I should be more disposed, had I the power, to reverse this proposition. The powers of the Federal Executive are enormous, and its patronage most extensive. For this cause, we see the nation frequently convulsed in the choice of this magistrate. The office of President overshadows every other part of the Government. His election absorbs the wishes and thoughts of a large portion of the nation. Other elections, and political measures of vital importance, are too often made subservient to the advancement of the interests of favorite candidates for the Presidency. It is much to be feared, that the conflicts which take place for this glittering object of ambition, may more endanger the permanency of our General Government than any thing else which can happen to it. The remedy would be found in diminishing the power, or, at least the patronage of the Executive of the United States.

It may be well supposed, however, that there are some of the powers which are conferred on the Executive of the Union which may be necessary to it, but would be entirely otherwise, as applied to the State Government. In the United States, are invested, the powers of war and peace, the regulation of commerce, and the management of our external relations. The cares of the State Government are principally confined to the regulation of our internal affairs. And for the management of these, the powers we have given the Executive have been found amply sufficient, and to have been judiciously arranged, under the existing Government.

The gentleman from Brooke says, that the impeachment to which the Governor is liable, is a mere nominal thing; it contains no terror, because he can only be impeached after his office ceases. But will the gentleman recollect, that if convicted on impeachment, he may be disabled to hold any office in future, and subjected to such pains and penalties as may be prescribed by law?

The gentlemen who are against the Council, under any modification, have not agreed upon what they will substitute for it. Now, I am persuaded, that whenever they bring forward a plan, it will be found that it will not be as efficient, or economical, as the small Council I propose to be retained.

The Executive Committee have decided there shall be a Lieutenant Governor, but have as yet, assigned him no duties.

He must, if the Council be abolished, be a salaried officer. There must be also, some other subordinate and auxiliary officers, to transact the public business. By my plan, the Lieutenant Governor is to be one of the Council, as at present, and to receive no additional salary.

The Committee will, however, be better enabled to decide, on the intrinsic, or comparative merits, of what is intended to be substituted, for a Council under any modification, when gentlemen shall see fit, more fully to develop their views on the subject.

MR. HENDERSON remarked, that it was his misfortune, again to differ with the estimable gentleman who had just favored the Committee with his views. I will not, said Mr. H., detain the Committee long, because I am aware, that what I may say, will come recommended neither by weight of reputation, nor by any grace of manner. I agree, Mr. Chairman, that the friends of the proposition under consideration, are bound to give reasons to this Convention, and to the people themselves, for the contemplated change, and sound and strong reasons too. Unless this can be done, let the existing mode of election continue. Such, I admit, is the course of prudence and common sense. It really does appear to me, Sir, that it were not difficult to place this matter in a point of light, clearly shewing the propriety of electing the Chief Magistrate of the State by the citizens in their primary capacity. The gentleman from this city, who has just taken his seat, has amused us with something like a declamation upon the topic of a splendid Executive. In this, the gentleman has leaped before he reached the stile. He has invested the Governor with an imaginary splendor; and, having done this, he has very gravely proceeded to prove that this gorgeous pageant ought not to be elected by the people. Now, Sir, this is varying the question in a manner singular enough. We contend that the Governor should be elected by the people; and to prove this political position untrue, we are told that he ought not to be so elected, because he is to be armed with great powers, and arrayed in great magnificence. The presumption is, that this body, in its wisdom, will give to this department of the Government, such powers as are consistent with the interest and honor of the Commonwealth. Thus presuming, we are called upon to decide on the mode of his election. My opinion is, that he ought to be elected by the people, and

for the space of three years. I voted for striking out the term of years, conceiving it more regular to test the principle first, and fill the blank afterwards.

Let us then, Mr. Chairman, without heeding nicknames, by which principles are too often prejudiced, proceed with the enquiry. And here, Sir, I venture to assume a ground, the soundness of which may defy criticism, that, *as an individual ought, in no important concern, to do by another what he can as well do by himself, so a people ought not to execute by agency that to which it is competent in its proper original character.* If this be true, then, we have to ascertain whether the citizens at large can perform this duty, as well as their Legislature, or not. I maintain the affirmative, not only of this proposition, but of the other one; that they can perform it better; and that strong, very strong objections to the action of the Legislature upon the subject, exist.

What is the nature of the duty? What the qualifications necessary to its discharge? Sound understanding and honesty. Are there any recondite principles of science in the matter? Is it complete in its parts? Do any peculiar difficulties attend, or obscurities hang over it? No man ought to be a Governor of Virginia, who has not attained considerable age, performed eminent public services, and required a diffusive reputation, a high standing. All men of that description are, in the very nature of the thing, generally known to the people. Have the people, then, not judgment enough to discern who is fit, and rectitude enough to have a sufficient regard, indeed, for their own interests and dignity, to choose him when discerned? I cannot, and will not, impute to the sovereign people of this ancient Commonwealth, so much folly, or obliquity as to doubt it.

It may not be amiss, Sir, to advert to our sister States for a moment: eighteen elect their Chief Magistrates by the people; six, including Virginia, by their Legislatures. This is not referred to, in the expectation, that we shall blindly follow their example; but, in the hope that gentlemen will be persuaded to pause, and ponder on the fact, that three-fourths of the States in our Union, have adopted the system which we advocate.

He who will study the European Governments, and especially that of England, will be struck with the idea, that they are built upon the ground of making the principles of *monarchy, aristocracy, and democracy*, conflict with each other in such proportions, as to preserve the energy of the whole. Such is the theory of the British Government. I will not examine it now, in the abstract, or in its supposed aptitude or inaptitude, to the circumstances or character of that or any other people. Suffice it to say, that no American politician ought to resist the declaration, that the theory of our Governments is the *sovereignty of the people, and the responsibility of their agents.* And, to maintain this responsibility in its full vigor, the wise men who framed our institutions, have so ordered, that the Legislative and Executive Departments, should emanate *directly from the people themselves.* Thus, each looking to its source, will feel that jealousy of the other, which inspires mutual vigilance, perpetuates liberty, and establishes public security. This is the broad, the vital, the beautiful principle, which stands substitute for the European plan of checks and balances. This it is, that gives to the Governments composing our happy political fraternity, the spirit which assures us, they will not prove disloyal to the societies over which they preside. Remove this responsibility, destroy this laudable and manly jealousy; and, although circumstances may prostrate the existence of free institutions, they are the sport of casualty. It is no answer to this argument, to say, that all the powers of the Government are vested, not in *one man*, but in *many.* *Many tyrants are not more tolerable than one.* It is against the *principle* of tyranny, that I struggle with, in its details. Sir, said Mr. H., I am advancing no novelties. I am the humble echo of the voice of the fathers of the Revolution; the Statesmen whom Virginia has delighted to honor. Few of those to whom I allude, are gathered to their fathers; another grace, by his venerable presence, the deliberations of this body.

Here Mr. H. read from Jefferson's Notes on Virginia, as follows: "All the powers, Legislative, Executive, and Judiciary, result to the Legislative body. *The concentration of these, in the same hands, is precisely the definition of despotic Government.* It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. *One hundred and seventy-three Despots, would surely be as oppressive as one.*"

Again: Mr. H. read, "They, (meaning the Legislature,) have, accordingly, in many instances, decided rights, which should have been left to Judiciary controversy; and the *direction of the Executive, during the whole time of their session, is becoming habitual and familiar.*"

He then referred to the 47th No. of the Federalist, written by Mr. Madison, and read as follows: "No political truth is of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, Legislative, Executive and Judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or *elective*, may, justly be pronounced the very definition of tyranny." Mr.

H. here called the attention of the Committee to the 40th No. of the same work, written by the same gentleman, and read as follows: "It is agreed on all sides, that the powers properly belonging to one of the Departments ought not to be directly and completely administered by either of the other Departments. It is equally evident, that in reference to each other, neither of them ought to possess, directly or indirectly, *an overruling influence* in the administration of their respective powers." Mr. H. then referred to the 51st No. of the Federalist, written by General Hamilton, and read as follows: "In order to lay a due foundation for that separate and distinct exercise of the different powers of Government, which, to a certain extent, is admitted to be essential to the preservation of liberty, it is evident that each Department should have *a will of its own*; and, consequently, should be so constituted, that the members of each should have *as little agency as possible in the appointment of the members of the others*."

Again: "But the great security against a gradual concentration of the several powers in the same Department, consists in giving those who administer each Department, the necessary constitutional means, and personal motives, to resist the encroachments of the others. The provision for defence must, in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to encounter ambition. The interests of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of Government. But what is Government itself, but the greatest of all reflections on human nature? If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary." I may, continued Mr. H., have fatigued the attention, or offended the taste of the Committee. My excuse, Sir, is this: We are boldly called on to give reasons for the alteration we project. I am without consequence, true; unknown to fame, and without those powers which enable some men to spread a charm over every topic which they touch. I am also one of a class of men denounced as innovators, visionaries. All that I can hope is, that my arguments, when sustained by the names of Jefferson, Hamilton, and of the honored fellow-labourer of Hamilton, shall be particularly and soberly considered. I ask, Sir, if my doctrine is not fully borne out by the writings of those great men, who, however they may have differed on other subjects, all unite in proclaiming the principles of the *sovereignty of the people*, the separation of the different Departments of Government, and their *independence of each other*, the folly and danger of *permitting the one Department to appoint the other*, and that to allow one an undue influence *indirectly*, is equivalent to a *direct* control. These, Sir, are the springs of republican Government, its vital elements, the pledges of its durability, the rock of its safety.

Mr. Chairman: Gentlemen in the face of one of the greatest men in America, the political patriarch of Virginia, over the ashes of his illustrious compatriots, persist in denying these great political truths. They pronounce our Governors wise and good, and challenge us to specify acts of official abuse or turpitude. Surrounded as we are by gentlemen who have acted in the affairs of the Executive; mingling as many of these respectable gentlemen do in our deliberations, shall we perform the invidious and painful office to which we are invited? And for what? We are not scanning the official conduct of any body. We came here on no such errand. Their acts are embodied in the history of the Commonwealth: the citizens know them well. In the year 1781, Thomas Jefferson prepared his Notes. He had recently filled the Chair of Governor, and knew better than any man in the State, the action of the Legislature on the Executive. What does he say? That the direction of the Executive by the Legislature was *habitual and familiar*. He had felt it. This is history, not speculation. It proves that your Governor *has no will of his own*; that he is the creature of the Legislature; a very man of straw.

The gentleman to whose remarks I have heretofore alluded, gave us a fine picture of Executive excellence; and finished it by informing us, that so harmless an Executive had we, that *a great portion of the people actually did not know who the Governor was*. Is this desirable? A free people, professing to be intelligent, and to take an interest in their *own affairs*, not to know who their Governor is! and to be felicitated upon it in this assemblage. Truly, the gentleman has placed the sovereign people in a most dreamy and beatified state! Sir, I wish to arouse them from their unmanly torpor. I wish, Sir, that the people *may* know their Governor, and that the Governor *may know the people*. Mr. Jefferson in his Notes, states, "in December, 1776, our circumstances being much distressed, it was proposed in the House of Delegates to create a *Dictator*, invested with every power, Legislative, Executive, and Judiciary, civil and military, of life and death, over our own persons and over our own properties; and in June, 1781, again under calamity, the same proposition was repeated, *and wanted a few votes only of being passed*." Is there a living man who will doubt the wisdom and patriotism of the Legislatures of 1776, and 1781? Surely the gentleman from Chesterfield, who seems so confident that we can give no good reasons for the

course we recommend, is not that man. The cause, then, of this most extraordinary and appalling project of clothing one man with absolute despotism, *in order that the Republic might receive no harm*, is to be found in the utter imbecility of the Executive Department of the Government. Any other supposition, imputes treason against the freedom of the people, to the fathers of the Revolution. Are we, in the teeth of reason, against the advice of the wise, the warnings of history, to continue an Executive utterly incompetent? An Executive for the "piping times of peace," that will tremble to its centre when war blows its blast? A fair-weather Government, that may be wrecked on the first billow of the tempest? I trust not, Sir. No, let us embark our fortunes in a vessel that will ride proudly amidst the roarings of the storm, and bear unshaken, that broad pendant of freedom under the lightning's flash.

Mr. Chairman,—I am not a gloomy politician; on the contrary, I hope the best of men and things; but I cannot shut my ears to what passes around me. An able gentleman told us, we ought to prepare for a state of affairs within the scope of possibility, and to which all good men look with mournful apprehension. The day may come, when Virginia may be compelled to take her rank amongst the nations of the earth. Suppose a scene of turmoil, of peril, is there a man of sense in the Commonwealth, who would rest securely, at such a crisis, on an Executive constructed like ours? Let us, for Heaven's sake, frame such a Government as will bring out and wield the energies of the whole people, when the fortune of war imperiously demands it. Again, Sir; the very term *Legislature* indicates the appropriate functions of the body. It is no part of that duty to elect the Executive. How many, how various, how difficult the subjects of legislation! What labour, reflection, devotion, and sober-minded men are necessary to do justice to them? Surely, our law-givers have ample employment, if confined within their legitimate sphere. We all know how the passions, intrigues, combinations, incident to these elections, agitate any body of men, and unfit them for that cool thought, accurate analysis, and profound research, so indispensable to public usefulness in this great department. I appeal to the people of Virginia, if the past is not a lucid commentary upon this doctrine. Some gentlemen are so very tender of the public repose, that they would not expose the people to the agitations arising from the election of their Governor. Sir, I maintain that a moderate exercise of the public mind, has a most salutary effect in instructing the people, in habituating them to think of their rights and interests, and in preserving that vigilance and self-respect, which are the strength and glory of a Republic. The people will not thank gentlemen for consulting their *ease* by curtailing their *rights*. I am not one of those zealous and minute politicians, who would continually tease the citizens of the country with the election of constables and all the little machinery of place. I despise it; I will not

"Ocean into tempest work,
To waft a feather, or to drown a fly."

But the great Legislative and Executive Departments of Government ought to be elected, not by each other, but by the people themselves.

The gentleman from this city told us, that the citizens elected the Legislature, and the Legislature the Governor; and that, therefore, the citizens elected the Governor. Sir, this is very good doctrine at that forum where the gentleman plays an eminent part; but he will not be able to satisfy the common sense of his fellow-citizens by this political special pleading. And he will permit me to express my surprise, that he should so far play upon their credulity, as to present them a law-adafe in lieu of their political privileges. We are informed, that our Councillors are endowed with great wisdom and efficiency. It may be so. But I remain to learn that they are the superiors, or the peers of the Attorney General and Auditor of Public Accounts. At any rate, we certainly can provide an inexpensive and dignified advisory Council. It is objected, that we are about to confide the interesting prerogative of mercy to a single man. Why so? May we not provide, that advice shall be taken under our plan as well as under that the abolition of which we seek?

I have trespassed too long on the patience of the Committee, in making these desultory remarks. And I close by asking, if their spirit be not approved by the best theories of Government, supported by the highest authorities in America, and vindicated by the history of the Commonwealth itself?

Mr. Leigh followed Mr. Henderson, and expressed the desire he had long felt, to know more about a fact stated in Jefferson's Notes, and adverted to by Mr. H. concerning a proposal twice made, in 1776 and 1781, by the Legislature of Virginia, to appoint a Dictator. He wanted to know, whether this was Mr. J's. account of his own view of the effect of the proposition, or whether the proposal was actually made in terms. It was not to be found on the Journals of the Assembly, but might have been offered in Committee of the Whole. As to another passage, also quoted from the same work, expressing Mr. J's. views as to the practical subserviency of the Governor to the Assembly, he could not understand its meaning. The Governor was

merely an Executive officer, and had no independent power to exercise, unless it was the prerogative of pardon. He adverted to the investigation into Mr. J's. conduct, and his honorable acquittal, as part of his general position, that *no one abuse* had occurred in the Executive Department from the foundation of the present Government to the present day. To this statement he challenged contradiction. He himself then stated one instance, viz: the granting a few barrels of damaged powder to be fired on the public square. [Here a well known voice was heard to remark, that the grant had made far more noise than ever the powder did, for that would not burn.] Mr. L. denied that the Governor was dependent on the Legislature in any other sense than every other Governor was; and asked if gentlemen wished a Governor with a prerogative like that of the Crown, and power to call out the militia against the will of the Legislature? He remarked, with some severity, on the proposition to abolish the Council, and concluded, it had answered precisely the end of its appointment; which was to reduce, by dividing the Executive power, and so render it incapable of evil.

He retorted the charge of aristocracy, by charging the plan to give power to the Executive, with a spice of monarchy. He contended the Executive of the United States was an elective monarch; and went into a long digression on the effect of patronage in the General Government, and concluded with insisting, that if the Executive of Virginia was to have similar powers, the election of a Governor would immediately grow into as great importance in Virginia, as the election of a President was to the United States.

Mr. Doddridge promising to answer the gentleman's call for information to-morrow, moved that the Committee rise.

It rose accordingly.

The President laid before the Convention the following letter from Calohill Mennis:

RICHMOND, November 26th.

SIR—My health having become so feeble as to prevent my discharging the duties of a member of the Convention, I resign my seat. With high respect,

CALOHILL MENNIS.

JAMES MONROE, *President of the Convention.*

Mr. Claytor then announced, that the Delegation from Mr. Mennis's District, had agreed upon Samuel Branch, Esq. of Buckingham, as a suitable person to fill the vacancy caused by his resignation; and moved that the Sergeant at Arms, cause Mr. Branch to be notified of his election: Which was ordered accordingly.

The House then adjourned.

FRIDAY, NOVEMBER 27, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong of the Presbyterian Church.

The House resolved itself into a Committee of the Whole, Mr. P. P. Barbour in the Chair; the question being on the amendment of Mr. Doddridge to the first resolution of the Executive Committee.

(The resolution reads,

"Resolved, That the Chief Executive office of this Commonwealth ought to be vested in a Governor.")

Mr. Doddridge's amendment is in these words:

"To be elected once in every three years, at the time of the general annual elections, by the persons qualified to vote for the most numerous branch of the General Assembly.")

MR. DODDRIDGE took the floor in explanation of his amendment:

I observed yesterday evening, said he, that the discussion was becoming too latitudinous, and I will now endeavour to confine myself to the question raised by my amendment, and to that alone. This question is, not, whether we shall build up a splendid Executive, or whether any spice of monarchy shall be infused into it. The question is, should the first resolution prevail, whether the Governor of this Commonwealth shall be elected by the people, or by the General Assembly as heretofore. The amendment involves nothing more. The decision of this question will greatly influence our votes on others. If the people shall elect their Governor, to the people he will be responsible, and not to the Legislature. It is hereafter to be determined whether the Executive shall be entrusted with additional powers, and if so, whether these shall be exercised by him alone, or with the advice and under the direction of a controlling Council. The decisions of these latter questions will greatly depend on the fate of the present amendment. I do not mean at this time, to give an opinion whether ad-

ditional powers of any description ought to be conferred, but simply to enquire whether the election of our Governors ought not to be given to the people. My remarks, will, of course, lie within a narrow compass. In my remarks of yesterday, I referred to the opinion of Mr. Jefferson on the very question propounded by the amendment under consideration. This opinion is contained in the Notes on Virginia. The words of the author were yesterday quoted from memory only. Since then the book has been furnished me by a friend and I will use it for greater accuracy. I am the more induced to do this, as the authority of that gentleman, contained in a private letter, has been used against me in this body by one of his friends.

I acknowledge, that I did not generally approve the conduct of Mr. Jefferson as a practical politician. Many of his opinions, formed at a time when he had attained to a maturity of age and judgment, ripened by much experience—when the Constitution of the United States with its honours and emoluments was not thought of—when these States were bound together by the feeble cords of the Confederation alone—I have approved of since my youth. Such are his opinions on the great principles of our present Constitution, and particularly the organization of the Executive and Judicial Departments. After urging as an objection to the latter, the omission to provide that their salaries shall not be reduced during their continuance in office, and to the former, the entire dependence of the Executive on the Legislature, and the uselessness of the Council, Mr. Jefferson proceeds thus: (See Notes on Virginia, pp. 126, 7.) “All the powers of Government result to the Legislative body. The concentration of these in the same hands is precisely the definition of despotic Government. It will be no alleviation, that these powers will be exercised by a plurality of persons, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the Republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the Government we fought for; but one which should not only be founded on free principles, but in which the power of Government should be so divided and balanced, among several bodies of magistracy, as that no one could transcend the legal limits without being effectually checked and restrained by the others. For these reasons that Convention which passed the ordinance of Government, laid its foundation on this basis; that the Legislative, Executive, and Judiciary Departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was placed between these separate powers. The Judiciary and Executive members were left dependent on the Legislature for their subsistence in office, and some of them for their continuance in it.”

Thus we see, that shortly after the adoption of the present Constitution, it was objected that the Executive, instead of being elected by the people and responsible to them, was appointed by the General Assembly and only responsible to them. The theory maintained in the Notes on Virginia is our theory. I will now show, that after Mr. Jefferson's retirement from the Presidency of the United States, he maintained the same opinions, and expressed them with such force as to assure us, that his intellect not only remained unimpaired, but that his convictions were strengthened by a longer experience of the defects in our present system, which he had so early pointed out.

In a letter to his friend, dated July 12, 1816, Mr. Jefferson says: “The question you propose on equal representation, has become a party one, in which I wish to take no public share. Yet if it be asked for your own satisfaction only, and not to be quoted before the public, I have no motive to withhold it, and the less from you, as it coincides with your own. At the birth of our Republic I committed that opinion to the world, in the draught of a Constitution annexed to the Notes on Virginia, in which a provision was made for a representation permanently equal. The infancy of the subject at that moment, and our inexperience of self-government, occasioned gross departures in that draught from genuine republican canons. In truth, the abuses of monarchy had so much filled all the space of political contemplation, that we imagined every thing republican that was not monarchy. We had not yet penetrated into the mother principle, that ‘Governments are republican only as they embody the will of their people and execute it.’ Hence our first Constitutions had, really no principle in them. But experience and reflection have more and more confirmed me in the particular importance of the representation then proposed. On that point then, I am entirely in sentiment with your letters, &c.”

“But inequality of representation in both Houses of our Legislature is not the only republican heresy in this first essay of our revolutionary patriots, at forming a Constitution. For, let it be agreed that Government is republican in proportion as every member composing it has his equal voice in the direction of its concerns (not indeed in person, which would be impracticable beyond the limits of a city or small township, but,) by representatives chosen by himself and responsible to him at short periods; and let us bring to the test of this canon every branch of our Constitution.

"In the Legislature, the House of Representatives is chosen by less than half the people, and not at all in proportion to those who do choose. The Senate are still more disproportionate, and for long terms of responsibility. In the Executive, *the Governor is entirely independent of the choice of the people and of their control; his Council equally so, and at best but a fifth wheel to a waggon.*"

Again. "But it will be said, that it is easier to find faults than to amend. I do not think their amendment so difficult as is pretended. Only lay down true principles and adhere to them inflexibly. Do not be frightened into their surrender by the alarms of the timid, or the croakings of wealth against the ascendancy of the people. If experience be called for, appeal to that of our fifteen or twenty Governments for forty years, and shew me where the people have done half the mischief in these forty years, that a single despot would have done in a single year, or half the riots and rebellions, the crimes and the punishments, which have taken place in any single nation under Kingly Government during the same period. The true foundation of republican Government is, the equal rights of every citizen in his person and property, and in their management. Try by this, as a tally, every provision in our Constitution, and see if it hangs directly on the will of the people. Reduce your Legislature to a convenient number, for full, but orderly discussion. *Let every man who fights or pays, exercise his just and equal right in their election.* Let the Executive be chosen in the same way, and for the same term, by those whose agent he is to be, and have *no screen of a Council, behind which to skulk from responsibility.*"

Mr. Chairman: I will make a further quotation from the same author, to shew the advantage of a single Executive head, uncontrolled by any species of Council. The words are these: "Nomination to office is an Executive function. To give it to the Legislature as we do, is a violation of the principle of the separation of powers. It swerves the members from correctness, by temptations to intrigue for office themselves, and to a corrupt barter of votes; and destroys responsibility, by dividing it among a multitude. By leaving nomination in its proper place, among Executive functions, the principle of the distribution of powers is preserved, and responsibility weighs with its heaviest force, on a single head."

They who have sought the present Convention, generally agree in the following principles, as comprehending the amendments desired; first, an equal apportionment of Representation among white population: second, an extension of the Right of Suffrage to all who pay taxes: third, a total abolition of the Executive Council: fourth, a single Executive Head, or Governor, to be elected by the people and responsible to them: fifth, future apportionments to keep representation equal among the people: sixth, a provision for future amendments. Our theory requires that every man to whom Government looks for support is a member of the community, and entitled to an equal share of power, and that to separate the Executive from the Legislative Department, it is necessary that the Governor should be immediately responsible to the people as the members of the Legislature are, and as completely independent of them as they are of him; and to secure Executive responsibility to the people, we are disposed to give him "*no screen of a Council, behind which to skulk from that responsibility.*" Every principle for which we contend, is supported by the deliberate opinions of Mr. Jefferson, who has been quoted against us to disprove an historical fact. He is even an authority for us as to that fact. We have asserted that our present Constitution was got up in haste, and not intended by those who made it as a durable instrument. We are so far from being contradicted by Mr. Jefferson in this, that he goes beyond us, and says that the Convention of 1776, were not even elected with a view to independence and a final separation from Great Britain.

His opinions are thus expressed in the Notes, page 128: Speaking of the Conventions of 1775, and 1776, he says, "These were first chosen, anew, for every particular session. But in March, 1775, they recommended to the people to choose a Convention, which should continue in office a year. This was done accordingly in April, 1775; and in July following, that Convention passed an ordinance for the election of Delegates in the month of April annually. It is well known that in July, 1775, a separation from Great Britain, and establishment of republican Government, had never yet entered into any person's mind. A Convention, therefore, chosen under that ordinance, cannot be said to have been *chosen for purposes which certainly did not exist in the minds of those who passed it.* Under this ordinance, at the annual election in April, 1776, a Convention for the year was chosen. *Independence, and the establishment of a new form of Government were not even yet the objects of the people at large.*" In Mr. Jefferson's views of the historical fact we are more than supported by his assertion, that they who made our Constitution were not elected for such a purpose. It is not to be wondered at, therefore, that in page 124 of the Notes, he should speak thus of the Constitution made by them, viz: "The Constitution was formed when we were new and inexperienced in the science of Government. It was the first, too, which was formed in the whole United States. No wonder, then, that time and trial have discovered very capital defects in it."

So much, then, for the authority of Mr. Jefferson, who has been dragged into this debate by his friends, to serve purposes directly contrary to his own principles, which are proved to be in strict accordance with ours throughout.

I have already said, that the Governor is not a responsible officer, even to the General Assembly, who appoint him. This position I now repeat, for the purpose of meeting more directly the arguments of gentlemen opposed to me. In sustaining this position, I beg leave to notice the actual organization of the Executive Council. This body is composed of eight members appointed by joint ballot of the Senate and House of Delegates. The appointing power can only remove two of them at the expiration of every three years. Each third year has on this account acquired the title of scratch year. Should every member of this body become at once obnoxious to the General Assembly; should all become rotten at the same time in this little *State of Denmark*, what can the Assembly do? At the end of three years they can remove two, and three years afterwards two more, and so on. Thus an operation of twelve years is required to displace eight Councillors, although every one of them has lost public confidence. In the mean time, those appointed to succeed the members removed may have become just as obnoxious as they. Practically, therefore, there may always be an Executive Council, possessing neither the confidence of the Assembly nor the country. Universal experience has proved, that when responsibility is divided among many agents, it ceases to be responsibility. This I consider a political truth of universal acceptance. If Councillors are not thus responsible to the Assembly, the gentleman from Richmond, (Mr. Nicholas,) triumphantly says, that this circumstance proves the *Executive* Department to be as independent as we claim it should be. But the gentleman forgets that our argument is, that the *Governor* is not an independent Executive officer, and therefore, not responsible for the manner in which the Executive functions are performed. The Council is, at least, too imperfectly responsible to the General Assembly, while to the people the members are not accountable at all. Yet these Councillors are a shield to the Governor, behind which he may skulk with the most perfect security. Not only is this evident from the Constitution itself, but the very explanation of the gentleman from Amelia, (Gov. Giles,) makes it more plain, if possible. According to the Constitution, and the practice thus explained, the Governor, except when acting as Commander-in-Chief, can do no Executive act, without the advice of Council. Without that advice he cannot even award a Commission on recommendation of the County Court. Is it not idle then, to hold him accountable for the omission to act, when the Council shall have omitted or refused to advise him to do his duty? But it is said, that he is not bound to act on the advice when given, and is therefore, independent of the Council. This may be true; yet when he is advised to violate the most important and sacred of his duties, and he follows that advice, all experience has taught us, that the advice he receives is his perfect and sure defence, and I have heard that defence made within these walls against a motion for an impeachment; and there are now sitting by me two members of this Convention who have given their votes against an impeachment on that very ground. If, therefore, the Governor is advised to commit a malfeasance in office, and he does it, he is not responsible, because the advice is his protection; and if he and the Council concur in the omission to discharge an important duty, he is not responsible for non-feasance, because he could not act without advice. From this view, it is manifest that the Governor of this Commonwealth is a mere creature of the General Assembly; a political irresponsible cypher, and the Council of State a perfect nuisance.

There is another view of the situation of the Executive Council which I feel it necessary to take, and in doing this I will beg to be understood as having no reference to any member of that body, past, present, or to come. In this view I will only have reference to the weakness of our nature; that weakness, of which I acknowledge myself a large partaker. Whoever feels himself exempt from frailties has not studied himself. Since the fall of our first parents we are indeed all exposed to be led astray, by the suggestions of interest, and even to be deluded through our virtues and the amiabilities of our natures. The situation of an Executive Councillor peculiarly exposes him to temptation. When he takes his seat at the board, he does not expect to be the victim of the first, or of any future scratch, as it is called. He hopes to hold his office for life or until he can obtain some higher preferment. His salary will not maintain him as a private gentleman in this city; much less will it sustain or enable him to provide for a family. He must follow the law, physic or some other laudable occupation, with the profits of which and the aid of his small salary he can get along. A Councillor, in fact, becomes to every intent and purpose, a citizen of Richmond, in which, surrounded by his friends, associates and dearest connexions, he intends to live and expects to die. The Councillor elected from the country, ceases to be its representative, and being blinded by the interests of the city, becomes, without his own knowledge, its advocate at the Council board. Should the Governor with advice of Council expend the public money too profusely on the Penitentiary, Armory,

Warehouse or James river, or other city interests, this profusion, although a practical evil, is not felt in the city. Nay, it is unknown there—those living within the circle and influence of these expenditures feel a benefit, without knowing or dreaming of any wrong. They have full confidence in their neighbours and friends, the Governor and members of the Council of State. It is not their business, nor their immediate interest to suspect or enquire after abuses, and believing that none exist, they are ready to join in the declaration, so often repeated here, that “all has gone on smoothly—all has worked well!” &c. If such be the tendency of things—if the residence of Councillors in the city, and of the habits formed there, withdraws their allegiance from the country and attaches them to city interests, it is not to be expected that where there is any competition between these and country interests, the latter will be fairly represented. Considering the large sums expended here by Government, and the incessant opportunities afforded for gain by improper disbursements, it cannot be doubted that by one means or another many have been drawn into temptation. The means of temptation are of no importance. The abuse is the evil, and it is our desire to prevent it.

[I wish to know, Mr. Chairman, whether, following the example of others, I am at liberty to refer to the remarks of the gentleman from Chesterfield in the Committee.

Here the Chair stated, that it could only be tolerated now, because such violations of Parliamentary practice had been permitted before.

Mr. Leigh said, that he was willing that any thing he had said any where should be the subject of remark.

The Chair, in its decision, disclaimed any reference to any individual.]

Mr. Doddridge resumed: I only desired to make a reference to certain remarks on our general tendency to corruption with our growth in years. The gentleman stated, that from his early manhood to the present day, he had marked its growth, and had especially traced its effects in the increasing love of office, and in the character of the means to which men resort to obtain it. There is much truth in the observation. I am not disposed to look altogether on the dark side of things. There is a German or Dutch writer of aphorisms, (I do not remember which,) who says, that a man who has known a great many villains is an old man, and that he who has not known them is still young, though in years he may be as old as Methusaleh. Our growing old in the knowledge of man, exposes more, his weakness to our view. Along the toilsome path of life we make so many discoveries of error and abuse, that we too easily give ourselves up to the distressing belief that all is growing in corruption around us—a belief, which may serve to increase our distrust, but should not be allowed to lessen our enjoyments or diminish our confidence in our friends and countrymen generally. Whether men of the present age are more corrupt than those of ages gone by, or not, is a question about which men may form different opinions. That human nature is the same every where and in all times, is a practical truth. Human nature both formerly and now, has been such that to insure order, discipline and integrity in the administration of public affairs, real, substantial, and not formal, responsibility, in public functionaries, is indispensable.

While discussing this subject, I understood the gentleman from Chesterfield as saying that he was acting for the Commonwealth. I have turned myself round to reflect what that Commonwealth can be, for which the gentleman had taken a stand so distinct from others. Who is this Commonwealth? Against whose assaults is it to be defended? According to some, it consists of certain freeholders alone; according to others, of all tax-paying citizens; while others again, compose it of the whole white population. This latter is the Commonwealth I am supporting. What then is that which the gentleman from Chesterfield defends? Is it the sixteen thousand freeholders who voted against a Convention?

[Mr. Leigh expressed some surprise at the manner in which the gentleman from Brooke was treating a somewhat idle remark which fell from him. He had considered the member from Frederick as preferring a bill of indictment against the Legislature, and he had set himself up for the defence, thus considering himself for the Commonwealth, in as much as he stood to defend the Commonwealth against charges of abuse of power by the Legislature.]

Mr. Doddridge: It is unnecessary for me to express the respect I feel for the public and private virtues of the gentleman from Chesterfield; that I believe is known to him, and he may rest assured that I would not willingly misunderstand him. In his remarks yesterday, that gentleman had enquired what act of abuse by the Executive could be pointed out and sustained, and I understood him to say he would yield the present question if one could be sustained, and moreover be thankful to any gentleman who would thus add to the knowledge he at present possessed of the manner of discharging Executive functions.

[Mr. Leigh said, he spoke of *usurpations* of power. He was not about to defend the Executive against *errors of judgment*.]

Mr. Doddridge: I understood the gentleman to say, an *abuse of power*, and I had then in my recollection a case, the production of which would entitle me to the gentleman's thanks. I will request the Secretary to read from the Journal of the House of Delegates in the session of 1808-9, the report of the Armory Committee from page 108 to 114, inclusive. (That report being read, Mr. D. resumed.)

Mr. Chairman,—Before that year, strong grounds existed for suspecting abuses, although the Executive reports of each successive year were of the most flattering character. It was supposed by some, that many of the arms were deficient in quality, and by others that their cost was greatly beyond that at which good arms of the same description could be purchased. These doubts increased every year; and every year, the Governor's message with the Armory report was calculated to dispel them. I refer to this report as furnishing record evidence of abuses which occupied a period of eight years of unexampled expenditure. I do not refer to it as censuring the Governors under whose administrations those abuses happened; nor any one else. My sole purpose is to shew, that while thousands and hundreds of thousands were in a course of expenditure on the Armory and its fixtures, and in the manufactory of arms, there was no system of care, accountability or supervisorship observed by the Executive Council. The Governors, (for, these proceedings occupied the whole administrations of several Executives,) were as unqualifiedly honest as any of their predecessors or successors. The fault was that of the Council, without whose advice the Governors could not act—Nay, could not act in one single instance otherwise than in conformity with that advice.

The officers of the Armory were of Executive appointment. The Executive was invested with full power to make all contracts, supervise their performance, and certify their execution with the sums due, to the Auditor. For payment of claims, the Auditor had no voucher except the Governor's warrant, drawn in pursuance of the advice of Council. In fine, the Executive power over these extraordinary expenditures was ample, and if our constitutional theory had been right, the Executive responsibility would have been commensurate with their power; instead of which, none was found to exist, except in the humble power of removing two members from the Council every three years.

From the report of the Committee it appears, that the Executive contracted with the Superintendent for finishing the buildings and fixtures within a limited time, and to pay the contractor for this labour in certain instalments as the work progressed. This contract was in writing, but being filed with the Council, it was in their power, and they permitted the contractor, who was Superintendent, to vary this contract from time to time to suit his own convenience, or as changes were suggested by his judgment; these changes resulted in immense additions to the contract under the head of "extra work." These alterations were never reduced to writing, because of the unlimited confidence reposed in the Superintendent.

Thus, public moneys were paid away in immense sums on contracts between the Executive Council and the contractor, of which contracts neither the Auditor, General Assembly, nor people, had any evidence; nor was there any record, book, voucher, or paper of any description kept, at the Armory, in the Council chamber or Auditor's office, by which the accounting committees of the Senate and House of Delegates could detect an excess in payment, if any existed. The Superintendent, in this "extra work," employed the labour of his own slaves, and certified the number of days and the amount of pay; and this certificate was the only evidence on which the advice of Council was founded. An illiterate man was examined before that committee, whose investigation was the most laborious I ever witnessed. This man testified that he kept the number of days' work on small slips of paper which he returned to the Superintendent, who made up (what he supposed to be) the results on sheets of paper, which he certified or deposed to. These sheets constituted the only evidence on which the Council advised payment of something like fourteen thousand days' work. When the committee of investigation called for evidences of this labour, neither the sheets containing the general results, nor the slips of paper, nor book, nor voucher of any kind could be found; nor does there exist to this hour one letter, or vestige of a letter, whereby this account can be either refuted or supported. The Journal of that session contains (I think in page 124 or 125,) a proposition to pass a resolution of censure with a view to an impeachment. That resolution was neither adopted nor rejected. It was postponed; and it was on that occasion I heard the advice of Council urged as a defence of the Governors as to all these transactions; and it was this defence, that induced at least two members of this Convention to vote for the postponement of that resolution.

A bill providing against future abuses of this kind grew out of the Armory report, and passed both Houses, which is now the law. This law may be found in the first volume of the Revised Code of 1819, page 130.

That law divested the Executive of the power of appointing Armory officers. It provided that *in future* no money should be drawn from the Treasury, except in pur-

suance of *written contracts*, and that all contracts whereby money should be so drawn, should be filed with the Auditor of Public Accounts, instead of the Executive Council. To the best of my recollection the bill as it passed the lower House had a clause to this effect, "that the officers of the Armory be removed." This clause contained a direct censure, which was unnecessary, and I believe it was stricken out on my motion. Here, then, is record evidence of the irresponsibility of the Governor to the General Assembly, and of the entire independence of the Executive Council, of all the world. They are convicted of negligence, carelessness and gross improvidence in the money transactions of Government committed to their controul, through a long series of years. For this, what did the Assembly do? Why, took from them the power of appointment—they disabled them from making or varying a contract otherwise than by *writing, and they deprived them of the custody of their own contracts when made*. They imposed many other restraints, as may be seen by the law referred to. Here the confidence of the General Assembly was completely withdrawn, yet they had to *content themselves with the slow operation of the scratch*. Such is the Executive responsibility of which the gentleman, who is now at its head, has boasted so much, and of which, he and others have so often declared, that, "it works so well that all has gone on smoothly."

At the time of the investigation to which I have alluded, a new Governor was appointed, of whom I would more particularly speak, but that his son is present, a member of this body. The Armory report shewed that the Superintendent claimed yet, a small balance, the payment of which had been suspended during the investigation. It was at the time, a current report in this city, that the Council, indignant at what they heard within these walls, retired to their chamber and advised the payment of that balance, and that the new Governor refused to act on that advice. This part I cannot assert to be true, as I did not enquire into it. But this I can assert, that the citizens of Richmond appeared to be as much excited against the investigation of the Armory Committee *then*, as they are against some of the efforts made in this Convention *now*. I will mention another fact. Governor Tyler, after having heard what passed in the Hall of Delegates, appointed a committee of men, commonly called here, back-woods-men, to examine the rifles. They tried them, and found them as they said, more dangerous to those who would use them than those against whom they were employed. Many pistols were reported to be unfit for use, on account of largeness of calibre, being made out of the barrels of muskets, bursted in the proof.

These remarks, Mr. Chairman, I thought it my reasonable duty to make; they are crude I know. It has been but a short time since the report of the Executive Committee was taken up, and I found it necessary to examine the Legislative Journal of 1808, rather than trust my frail memory.

Mr. Leigh rose in reply, and went into a history of the causes which led to the appointment of the Committee of Investigation. He referred to the determination of a party to put down the Armory; the means resorted to to libel the Superintendent; the unfair and oppressive course which was pursued in denying him an opportunity of defence; he then went on to give a farther history of the suit at law instituted against that officer; the elaborate trial of the cause before the General Court of the Commonwealth; the ample admission of the testimony from all quarters, and the result in his honorable and triumphant acquittal. His innocence was farther confirmed by his poverty. This one fact, he considered as an answer to Mr. D's. whole argument: for, if the Superintendent (Major John Clarke) had been guilty of no injury to the public, the Council had not permitted an injury to be done, and so were free from the charge which had been brought against them. Mr. L. defended Mr. Clarke (who resides in his District) with ardent zeal, and challenged the world to disprove his statement.

Mr. Doddridge rejoined. Major Clarke's acquittal did not touch his argument, or weaken it in the least. He had not charged him with malfeasance, but the Council with the grossest negligence; and though Major Clarke's honesty saved the State from injury at his hands, no thanks were due to those who had left power in his hands by which he might have depredated to a vast extent upon the public money. He knew Clarke well, and was his personal friend.

Mr. Cooke, after adverting to what had fallen sportively (and once more seriously) from Mr. Leigh, as to defending the Commonwealth in an indictment to be brought by him against the past course of legislation, said, that if he had not before been convinced of the imprudence of the pledge extorted from him to bring such an indictment, what he had now witnessed would be sufficient to admonish him, that to prefer any further charges would be imprudent indeed. He, therefore gave notice, that the day for the trying of that indictment would never come. He was far from blaming his friend from Brooke for what he had done, and as far from blaming his friend from Chesterfield, for his eloquent defence of an injured man; but he plainly saw, that if such charges, with their specifications, were to be tried here, the Convention would sit, not only till Christmas, but till Christmas of next year.

(Here Mr. Randolph's voice was heard to say, "Enter then a *nolle prosequi*.")

MR. MONROE rose and addressed the Committee in nearly the following words :

I wish to submit a few remarks in explanation of the ground on which I shall give my own vote, rather than with the expectation of producing any effect in the decision on this subject. It has been argued with great ability on both sides, and in a manner very gratifying to me as a citizen of this State and of the Union. The real question before the Committee is, whether the Governor shall be elected by the General Assembly in the manner now prescribed by the Constitution, or by the people at large. This is the question before you. I will concisely present my view of it, stating the objections which apply to each mode, and on which side in my judgment they preponderate. I consider the question as very important: inferior it is true to some which have come before us; but, involving in a high degree the fate of the Republic. I do believe it a question, involving in a high degree, the success of our system of Government. The objection to the election of the Executive by the General Assembly, is founded on the idea, that you thereby concentrate all the powers of Government in that body, uniting in one branch, not only the Legislative power, but a control over the other two branches, and thus bringing all the three in effect into one. This is the objection. Let us examine it. I admit most fully, that the unqualified concurrence of the three great powers of Government in one body, especially if in one person, gives it the character of a despotism. If these powers meet in a monarch who is hereditary, and responsible to nobody, that monarch is a despot, and the people are his slaves. But there is another aspect of the subject.

If these three powers are united in a General Assembly of the people, as in the ancient Republics, though the Government is not despotic, yet the consequences are equally fatal and even worse, than in the other case. All things are soon thrown into confusion; there is no security for property or any thing else. Life itself is not safe. Some popular leader gets the control, and soon makes himself a despot. In either of these instances, the concurrence of the three powers produces a despotism. But as soon as you pass the power from the people to their Representatives, the matter is changed. The people control all their movements. The people have a complete check upon them, if they are only true to themselves, intelligent and virtuous. Consider the operation on the Legislative body, even supposing the whole power to be in it. That power is liable to abuse, and has been abused there is no doubt. But still there is a check, although the whole power of Government be in one body. But, if there be a regular Constitution, and the three branches of Government be separated, and a limit is prescribed to the Legislative branch, and its power clearly defined; and, if in like manner, limits are set to the Executive Department and its power also defined; and the same with respect to the Judiciary; the powers of all being distinct and clearly defined; though the election of a Governor (for I now confine myself to that) be by the General Assembly, it cannot be said that the three powers are concentrated together in that body. There is a separation of them. How can they encroach on each other? How can the Governor interfere with the power of the Legislature? or the Legislature with the Executive? Common sense itself is a sure barrier. The difference of their duties, that of the one being to make the laws, and that of the other to execute them, is so marked and obvious that they cannot be mistaken. The duties of the Judiciary are still more distinct, and its limits more clearly and more easily defined. It is the Executive and Legislative powers, if any, which are likely to interfere. If the Constitution be well drawn, I see no danger on that score. The Judiciary will be independent, if they hold their offices during good behaviour. They ought to be maintained so, and should have power to declare any law which is contrary to the Constitution. This is my opinion. The danger is in the Legislative branch. I should be glad to see a check upon it in the Executive as well as in the Judiciary.

The success of our system of Government depends upon its organization, on the distribution of power between the different branches, and on keeping each branch independent of the others. Power I know may be abused: that the Legislature may influence the Governor, I cannot doubt. A leading man in the Legislature who can contribute greatly to his re-election is likely to have some weight with him; and that he may turn that weight to his own account in an improper manner, is probable. It is incident to the frailty of human nature. The check is in the intelligence of the people, and in the circulation by the press of the proceedings of public bodies. The people are the great check upon all.

Now let us look to the objections which exist to the election of a Governor by the people. From my own experience and reflection, I have learned, that when the appeal is made to the people, the most estimable men will be sought out. In the discharge of my official duties, I have traversed my country from North to South, and from East to West. I am acquainted with the whole of it. I know that the people are enlightened themselves, and are disposed to select the most enlightened men as their Representatives. I view my fellow-citizens from the East and from the West, from the North and from the South, with the same confidence and attachment, and consider them as a portion of the human race more capable of self-government than

any other in the world. When the question is for giving the election to the people, they have my entire confidence so far as in the nature of things they are qualified for such an office. But from their situation, they can hardly ever be acquainted with the real merits of the candidates. They cannot confer together to any great extent; they can hold no general meeting where the matter may be discussed, nor can they get impartial information.

They may hold meetings for local purposes, but this is all that they can do. Great caucusses are formed who make the nominations, and into whose hands the body of the people fall. It is by their agency and under their influence that the Governor is elected.

He then looks to his friends, and they in return look to him, and thus the country is divided into two parties on the worst and most dangerous of principles. Those who voted for the candidate consider themselves as compromised, and bound to support all his measures whatever they may be; and he in like manner feels bound to support them. Such is human nature, and such are the passions of men, as proved by their conduct in all Governments in all ages, and on which I found these remarks. By this means the independence of the people is weakened. While their elective power is confined to the choice of Senators and Delegates, and members of Congress, they are fully competent to the trust. They can perform their duty with perfect success. They have a personal knowledge of the men, and will choose those best qualified for the trust, and no consequence will follow that can operate to the injury of the State at large. But when you extend this to the Chief Magistrate, who has great power in the Government, the result is different.

As to the power the Chief Magistrate ought to possess, it is another question. Whether he ought to have the power of appointment is a matter that turns on other considerations. Be his election by whom it may, my opinion is, that he should hold his office for one term only. Then he is made independent. He serves his one term and retires. No selfish motives can operate upon him.

If we look to history on this subject, we see the demonstration, that the more you connect the people with the Executive, and the greater you make his power, the greater is the danger to Republican Government. What overthrew the ancient Republics? Go to Rome, and what do you find there? Was it not their own Consuls, whom they themselves had chosen, that overthrew the liberties of the State? Marius and Sylla, Pompey and Cæsar, till Cæsar made himself a despot? It was the people who elected him, and they stuck to him and their own destruction. The Republic was broken up into parties: their contentions were pushed to extremes, and ruin was the consequence. Self-government depends for its success, on keeping the people in a state of calmness. The less you give them to do in exercising their elective privilege, the safer they will be. Embark them in the election of a Chief Magistrate, and you agitate at once the whole State, from which I dread unfavorable consequences. The whole system turns upon the election of the Representatives to the Legislature, and to which they are fully competent.

I have thought it proper to state my view. I know that there are strong arguments both for and against each plan; but my idea is, that the more you confine the people within the limit stated, the safer will the Government be. If they are confined to the election of their Representatives they will sustain their dignity, and their judgment will be enlightened by the competition of the candidates, whose mutual rivalry will expose their errors to public view. It is on this that the security of the whole system turns. My opinion is, that the Legislature supplies the place of the people as a Representative body: they occupy that ground which the people themselves would occupy. If the Legislature has the power of impeachment, and the Senate power to try the persons impeached, they will watch over every other branch of the Government and keep it in order. It is my opinion, that through the Legislature, as occupying the place of the people, the whole movement will be controlled, and every branch made subservient to their will. This is my view.

MR. COALTER said:

Is there to be any compromise of interests and opinions in this case?

What are the great evils which led to this Convention?

The *inequality* of Representation is the *greatest* and is one *acknowledged by all*.

Serious evils have been felt, and which are supposed to grow out of this inequality.

The most *flagrant*; the most *unjustifiable*, (for it is without parallel in outrage, as it is without a semblance of reason or justice to support it,) is that refusal of the Legislature, to extend its aid to the courts in which Judge White lately, and so long, so honorably, and so satisfactorily presided.

The next has arisen out of the subject of Internal Improvement. This is one in which there are great conflicting interests; and, as may well be expected under every system in which justice may have been, and hereafter may be, withheld from particular sections.

I may possibly take the liberty to say something more at large on this subject, at some time hereafter, having heretofore taken a deep interest in, and turned my attention a good deal to, that subject : suffice it to say at present, that part of the country beyond the Blue Ridge, confessedly not having its equal share in Representation, may well demand to have their due weight in the Legislature, in order to promote these great interests, so far as that weight may enable them.

There is also another evil of great magnitude, and which *all acknowledge* ; and that is the great number of Representatives, and the great expense consequently attending our Legislative deliberations.

These are evils which *all admit* ; and these evils caused the people to vote for this Convention.

Had the question been put to the people : Will you have a Convention to remedy these evils ? I believe there would not have been one dissenting voice in the State.

Had a separate and distinct question though, been put to them ; will you also have a Convention to extend the Right of Suffrage in the terms and to the extent in which this Committee has extended it, what response would have been given to that question ? I appeal to this body, and to the knowledge they have of this people, whether thousands, and tens of thousands, nay hundreds of thousands, of those who voted for this Convention ; not in *lower Virginia* only, but in *all Virginia*, would not have voted against that distinct proposition ? In other words, had the freehold Suffrage, been the only evil complained of, would we have been here deliberating on that question ? I verily believe, that in that case, *no Convention*, would have prevailed one hundred to one. In fact, but for the other great and apparent evils, a Convention *for this purpose* never would have been *thought of*.

The Western country has much changed within the last eighteen years that I have been absent from it, if in truth that had been the only evil they complained of, such a proposition would have been supported by one in one hundred.

It has been merely brought in as *auxiliary*, and in the tempest of those passions which have been engendered by *real evils*.

But suppose a third question had been taken ; shall we have a Convention *that the Governor may be elected by the people* ? I will not go farther. For whether he is to have a patronage that will rouse the people from that quiet slumber in which they have reposed for fifty years, and *unravel the pack* who will be seeking for office, and who will make the welkin ring, has not yet developed itself—I will take the *naked proposition* as presented by the amendment.

What would the people have said ? Why, we never heard of this as an evil. Our sleep has been so profound, that we never even *dreamt* of it.

Each man will say—how can I elect a Governor ? I would be very willing to make my neighbour A. Governor ; but his *worth* may not be known to others. How am I to act ? He will be told, some man will be *nominated* to you ; you will be called on, to send some representative to a *Caucus*, to *nominate a Governor*—or your neighbours will send some one to this *Caucus*. You are a good Jackson-man, or you are a good Clay-man, and you must take care to vote for the man nominated by *your Caucus*, or your party will be overthrown.

If that is to be the case, he will say, I had rather the *Caucus* would elect him themselves, at once. Why call on me, if my judgment is not to be exercised ?

No, no, that won't do—that is too much like the present Constitution, which you must now vote to abolish. Our tried friend Mr. Jefferson has said there is danger in it, and although we have not yet *felt it*, we must *guard against danger*.

But if there must be a *Caucus*, why not let the members of the Legislature be that *Caucus* ? Why, my dear Sir, that is worse and worse—that is still coming nearer to the present Constitution—they might as well elect *directly*, as thus to do it *indirectly*.

But suppose they will *Caucus* it ? The members of Congress do so as to the President, and so do our members of Assembly ; and in fact, between them actually elect the President. In short, they have done little else for the last eight or ten years, but elect Presidents. Do you mean, Sir, that we shall be placed in the same situation as to our Governor ? That I am to be placed in a situation, in which, so far as I can learn, knowing nothing myself, and giving due faith and credit to all that is said on both sides, as to the candidates, it can only be a choice of evils ! If this is what you mean, I am not for it—I must go to my wheat-stack and draw straws : and if the Legislature will be bound to pass a law to make that a good vote, and that I may send the result to the polls, there to be registered as my vote, as Mr. Jefferson thought the present Constitution dangerous, I may vote for a change. But if I am to mix in the *hue and cry* against, or in *eulogising* a man that I knew nothing about, I beg to be excused.

I would rather stay at home and attend to my business ; in which case the election must be abandoned by me to those who have *something in view*.

At present, I ought to vote for an Elector of President of the United States, whom I know, and in whom I can confide.

That was understood to be the spirit of that Constitution, when I gave my sanction to it—and it was so practised on for some time.

I now elect my members to the Legislature of the State, and by the Constitution, they are my electors of Governor.

I have witnessed no evil growing out of that.

I have though, witnessed the deadly sin and wickedness growing out of the change in practice, which has deprived me of the power of electing an elector of President, whom I know. Nay, I am told, that the *Congressional or State Caucusses* have gone so far, that no man shall be elected by me, who will not give in his *adhcsion*—his promise to vote for a certain man as President, however unfit, either from bodily infirmity, or otherwise, he may thereafter be discovered to be.

This, in fact, makes me not the elector *myself* of the President, for which I am incompetent, as well by my natural constitution, as by the Constitution of the United States, but the *cats-paw* of a Congressional and State Caucus, or some other *party Caucus*.

I go against the whole of this as a deception on the people; alike contrary to sound sense and good morals, and of course, contrary to the true interest of any people.

Such, it seems to me, would be the common-sense argument of any plain man in the country, possessing common-sense, and a small knowledge of the course of things passing before him.

As to the history of the Executive branch of our Government, said to have been written by Mr. Jefferson—I don't recollect when it was written. If very soon after his own administration of that department, or he intended to say, *that from his own experience*, the Governor acted, not under the influence of his *own conscience*, but under that of the *Legislature*, it may be received as evidence, so far as it regarded himself; but, surely, not to implicate Patrick Henry—Governor Nelson—Governor Harrison—or any other Governor of those early days. No, Sir, he intended no such thing, either as to himself or others.

He merely intended to state his views of the tendency of the system, or of what it might thereafter result in.

The gentleman from Loudoun has given the *history*. He has read it in the eyes of this nation. A sleep, it is true; but not that sleep, which is often the symptom of approaching dissolution; and to arouse from which cataplasms are to be applied; but the sound, calm, refreshing sleep of the peaceful husbandman—untroubled by *dreams of ambition*, or fears for his safety.

I think a higher eulogium never was passed on any Executive Government than *that history, so well depicted*, has given of ours.

Like Almighty Providence, it causes punishment to be inflicted on the guilty violator of our laws. They feel it, and they alone tremble under it—all others are in mansions of peace, rest, and quietness.

I wish to sleep in peace after this Convention rises, and therefore I must vote against this amendment.

It is essential to the salvation of the State, according to my views, to resist it; and I must, at all times, and in all places, vote against a Constitution which shall have this provision in it.

Is it equally important to its friends? Must they oppose, *here and elsewhere*, any Constitution which has not this provision in it? If so, so far as I am concerned, a compromise is of no avail. Gentlemen must be finally willing, however they may vote now, to give up things not deemed absolutely essential to their rights at present—things that may wait to a future day, without injury to the State: Something for posterity to do, if real evils shall be found to arise, and accord for the present those things which are deemed by others as *essential* to the good of society, until evils are found to grow out of them, which they are not *now prepared*, and *cannot agree* to change.

I am *desirous*—*most willing* to remedy *real* evils—I am willing to go far in doing it. Tardy justice often leads to some degree of injustice. The jury may give too heavy damages. Be it so: it is the nature of things—against *excessive* damages, though the Court will release and grant a new trial; unless there is a release that will bring them down to something like censure; in which case, and for the sake of peace, judgment will be entered.

Let us be cautious how we go before our judges for a new trial.

Let us rather *agree upon the way*.

Mr. Stanard wishing to have the sense of the Committee taken on the isolated proposition, whether the Governor shall be elected by the people, moved to amend the amendment of Mr. Doddridge by striking out that part of it which says that he shall be so elected.

The question being put, it was decided in the negative: Ayes 43, Noes 48.
(Messrs. Monroe and Marshall, Ayes: Mr. Madison, No.)

The question recurred on the whole of Mr. Doddridge's amendment, and the votes stood, Ayes 46, Noes 46.

(Mr. Madison, Aye: Messrs. Monroe and Marshall, No.)

The votes being equally divided, the Chairman voted in the negative; so Mr. Doddridge's amendment was *rejected*.

Mr. Fitzhugh said, that if the question was taken as between leaving the appointment of the Governor and his term of office as at present, and an election by the people, he should be for the latter; but he wished a different course taken; and he, therefore, moved the following amendment:

"Resolved, That the Executive Office of this Commonwealth ought to be vested in a Governor;" as follows: "To be elected by the General Assembly for three years, and to be ineligible for three years thereafter."

Mr. F. said, his sole object was to render the Governor independent of the Legislature: to effect that object, he must either be elected by the people, or if by the Legislature, his term of service must be prolonged. The latter mode avoided Caucusses and popular excitement, and therefore, he offered his amendment.

Mr. Powell being disabled by a severe cold and hoarseness from advocating at length the plan for an Executive, which he had proposed in the Executive Committee, contented himself with simply moving it as an amendment.

It was suggested by the Chair, that the proper course would be, first to allow the present amendment to be modified by its friends and made as perfect as possible, before admitting a substitute for it; but as he was informed the practice of the House of Delegates was different, he should receive the amendment.

Mr. Stanard suggested that if it was received, still the existing amendment, with its modifications, would have priority; the other being subsequent in the order of nature, no matter what might be its place in the order of time.

At the suggestion of the Chair, Mr. Powell withdrew his amendment for the present.

Mr. Doddridge was opposed to the amendment of Mr. Fitzhugh; and gave notice that if it should fail, he would then modify his former amendment, so as to make the Governor eligible by the qualified voters for the most numerous branch of the Legislature, his term to be three years, and then to be ineligible for three years.

The question was then taken on the amendment of Mr. Fitzhugh, and carried: Ayes 47, Noes 43.

(Messrs. Marshall and Monroe in the affirmative, Mr. Madison in the negative.)

Mr. Upshur enquired of the Chair, if it would be in order to offer a substitute for this amendment. He explained himself to be in favour of having the Governor elected by the people rather than the Legislature, and to serve one term only.

The Chair replying in the affirmative,

Mr. Doddridge moved to strike out the whole, and insert as a substitute, the following:

"Resolved, That the Executive Office of this Commonwealth be vested in a Governor to be elected by the electors qualified to vote for members of the most numerous branch of the General Assembly, who shall continue in office years and be ineligible thereafter until after the expiration of years."

Mr. Randolph rose merely to suggest a hope that after the sense of the Committee had been so fairly and distinctly expressed, the amendment would not be pressed at this particular time, when two members from the south side of James river (Mr. Venable and Mr. Branch,) were absent.

[Mr. Branch has not yet arrived, and Mr. Venable is indisposed.]

Mr. Doddridge then moved that this resolution be for the present passed by.

Mr. Giles wished to know of the mover, whether he intended the election to be by a *majority* or only by a *plurality* of the qualified voters?

Mr. D. said, he had not thought of the details—they could be reserved.

The resolution was passed over, and the Committee proceeded to the second resolution which reads as follows:

"Resolved, That there ought to be appointed a Lieutenant Governor of this Commonwealth."

Mr. Mercer thought this resolution out of its due order. If the Council should be retained, there could be no need of a Lieutenant Governor. He moved to pass it over.

The Committee then passed to the third resolution, in the following words:

"Resolved, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council."

Mr. Giles being disabled by the state of his health and voice from discussing this subject, in which he was desirous of stating some facts and arguments, moved to pass it by.

The Committee then passed by the fourth resolution, which was in the following words:

"Resolved, That in case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties and powers of his office, the said powers and duties shall devolve on the Lieutenant Governor; and the Legislature may provide for the case of removal, death, or similar inability of the Lieutenant Governor."

And the fifth resolution having been read as follows:

"Resolved, That the Sheriffs of the different counties in the Commonwealth, shall hereafter be elected by the voters qualified to vote for the most numerous branch of the Legislature:"

Mr. Henderson moved to strike out the word Resolved, (in effect to destroy the resolution.)

Mr. NAYLOR went into a defence of the resolution:

Mr. Chairman,—As it is expected that the advocates for each provision now to be introduced into the Constitution should say something in support of it, or show some cause for its adoption; and, as it was on my motion that this one was reported, I think it incumbent upon me to state the considerations which prevailed in the Committee, and which I think ought to prevail generally in favour of this provision. In doing this, I shall be as brief as possible. It is essential to the character of a Republican Government, that the people with whom or in whom is all the power, should have the appointment of all their officers or public functionaries, either directly or indirectly. Now, there is not an officer in this Government, so far, or so entirely removed from the control of the people in his appointment or otherwise, as the Sheriff. They have no agency in his appointment either directly or indirectly. He is a creature entirely of the county courts, and the county courts create themselves. They perpetuate their own body, and are what is termed *imperium in imperio*. They have also by long usage, appropriated the office of Sheriff to themselves, although there is not a word in the Constitution which indicates such a meaning. They have just as much right to appropriate the clerkship to themselves, as the Sheriffalty. It is nothing more or less, than a set of men entrusted with the power of appointment for the good of the community, who have taken to themselves the whole benefit of it, and do now exercise that power of appointment for their own use and benefit. They have established an order of things among themselves, by which they take this office in a kind of rotation. And it is now the universal practice, with every one of those county court magistrates, who receives the office, to sell it for the highest price they can obtain, and in some instances, as I have been informed, this has been done at public auction. This has raised up another class of officers called Deputy Sheriffs, many of whom are worthy and respectable in their character, correct and upright in the discharge of their duty, though, from the circumstances in which they are placed, they are all exposed to strong temptation. And where any are disposed to yield to this temptation, there is no situation in which it can be done to so much advantage, with so much impunity, and unfortunately there are too many so disposed. And on account of the illicit gains which are to be made in that office, many of those who farm the office, give for it more than the whole fees would amount to, which is manifestly done upon the calculation of indemnifying themselves by speculation and exactions in one shape or another, from unfortunate debtors, to a large amount. Yes, Sir, and by these means, the misfortunes of the unfortunate are every day aggravated to an extreme degree. The officer by delay in the first instance, discourages the creditor or plaintiff, inasmuch, that at last he sells to the Deputy Sheriff his whole claim at a large discount of perhaps one-fourth of the whole. The sale of the debtor's property is then immediately forced, which was always delayed before, and the property purchased by the Deputy or for his benefit at perhaps one half of its value; it is immediately re-sold to the debtor at its full value on a short credit, taking bond and good security for the amount. This bond is immediately put into suit when it is due, and then another round of shaving and extortion takes place, and may be repeated until the original debt is doubled or tripled. These men who have been for some years thus engaged, look a-head and secure the office for a number of years in advance. The longer they hold it, the more adroit they become in their extortions, until they become the perfect leeches of society. It is in this office alone, that the bold and daring usurer can escape; it throws around him a protection which the law cannot or does not break through, and here alone the laws against usury and extortion are totally inefficient. Thus it is, that many who wish to follow the practice of shaving or exacting unlawful interest for their money, seek the office of Deputy Sheriff, as the only situation in which it can be carried on with impunity. It may be enquired, why are not these speculators punished? and why is not the law put in force against them? The answer is, that the only persons to put the law in force, are always so much in the power of those usurers and extortioners that they dare not complain.

If the Sheriffs were elected by the people, these enormities could not and would not take place, for, although, these men might escape from the bar of public justice, yet they would be taken up, tried, and condemned at the bar of public opinion, and

none such would be permitted to hold the office. But it will be objected, that to make the Sheriff eligible by the people, would be increasing the turmoil and turbulence of popular elections, from which much danger is apprehended. For my part, I do not apprehend the danger so much, or indeed any at all. Even in the States of New York and Pennsylvania, which are held up to us as frightful examples of popular elections, I do not see that so much evil has resulted. Where there is the vitality of liberty, there will be the vivacity of liberty, and this is far preferable to the calm which reigns in those Governments where there is no liberty, where its fires are repressed and buried deeply within the mountain as it were that shuts them in, until with concentrated violence they burst into a volcano. Carry those fears a degree further, and it may be found convenient and safe to deprive the people of all elections, and to save them from the trouble and demoralizing influence of choosing any of their public functionaries. But there is certainly much more danger in this fear, than all which gives rise to it. I would rather drink at the living rapid mountain stream, although it may sometimes be turbulent, and sometimes overflow its banks, than to drink at the stagnant pool which breeds pestilence and death. The one is an apt representation of free men in the exercise of their rights, the other of an all paralyzing despotism. Moreover, I am compelled to say, that there is something in the Virginian character, which secures us against all apprehension of those excesses which have been pointed out to us, as resulting from popular elections in some States to the North. The people in those last mentioned States are much more mixed: the native American character there has been much alloyed with a material which makes it more variable and unstable. Not so with the people of Virginia, where political sentiment moves on a larger scale, and cannot be so easily agitated. Their history shows, that no capricious, or unreasonable commotion has ever prevailed amongst them, and if there is a people on earth whom it is safe to trust with their own business in this respect, it is they. Why, then, refuse to permit them to elect their Sheriffs: officers, who are elected in a great majority of the other States by the people? especially, when it appears to be the most effectual remedy for the evils which I have pointed out.

Mr. Leigh replied at some length to Mr. Naylor. (But the Reporter has, unfortunately, made no sketch of his speech.)

Mr. Naylor in reply to Mr. Leigh, said, that he knew something of the practice in Maryland, where the Sheriffs are elected by the people, and he never knew or heard of the evils, such as had been pointed out by the gentleman from Chesterfield, as existing there. In fact, he did not see how they could exist, for the Sheriff there, before the sitting of a court, summonses forty-eight men, qualified to serve as jurors, and who serve during the whole court. At the trial of every cause, the names of those forty-eight men, written upon separate tickets are thrown into a box promiscuously, out of which the clerk draws by lot, twelve, who constitute the jury to try the cause. So that, unless the Sheriff, during the sitting of the court, should summon the whole forty-eight, with an eye to some particular cause, (which cannot be presumed,) there can be no such packing of juries. And as to our own system of selecting juries, among other good things, which he did hope would result from this Convention, would be the removal of that abomination in the administration of justice; for, it goes upon the unfounded presumption, that there are at all times to be found in the court yard during the sitting of the court twelve men, who are competent and fit to be trusted in determining every cause as it comes on for trial, in which may be involved the whole estate, or the characters of those citizens interested in those causes. And as to men in office, such as Sheriffs, pursuing with hostility those who voted against them, it is to be hoped, that a high example of that kind of vengeance will remain a solitary one, not to be repeated nor followed by those in the humbler walks of life. Knowing and believing it to be the desire of a large number of those citizens, whom I have the honour in part to represent, that this alteration should be made in the Constitution, with whom I do concur, I have, therefore, urged it, as I thought it my duty to do.

Mr. Giles supported the views of Mr. Leigh, and opposed the resolution as going to destroy the foundation of the existing county court system, which Mr. G. considered the most valuable part of the Constitution, and that to which the peaceful and happy progress of affairs for fifty-four years was mainly to be attributed. It tended to keep the power in the hands of the middle class of society, where it ought to be: it gave justice to the poor at little or no expense, and made the justices of the peace to be what their names import; the conservators and promoters of the social peace of the Commonwealth.

The question being taken on Mr. Henderson's motion, it was carried by a large majority: so the resolution was stricken out.

The Committee then rose, and the House adjourned.

SATURDAY, NOVEMBER 28, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Douglass, of the Presbyterian Church.

The House then went again into Committee of the Whole, Mr. P. P. Barbour in the Chair; and the question being on the sixth resolution of the Executive Committee, which is in the words following:

"Resolved, That the commissioned officers of Militia Companies be nominated to the Executive by a majority of their respective companies."

Mr. Mercer moved that it be passed by for the present.

The Committee then passed to the third resolution, which is as follows:

"Resolved, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council."

Mr. Mason, observing the absence of Mr. Nicholas, who had moved an amendment to this resolution, moved that it be passed over for the present.

The fourth, fifth, sixth and seventh resolutions having been passed over yesterday, The Committee took up the eighth resolution, which reads as follows:

"Resolved, That no pardon shall be granted in any case, until after conviction or judgment."

Mr. Doddridge having called for an explanation of the reasons on which this resolution was founded,

Mr. Morgan of Monongalia, briefly explained it to be, to prevent the interference of the Executive in the punishment of crimes, by interposing a pardon before trial and conviction. He referred to the cases so frequent in the State trials of England, where the Crown had thrown in the pardoning prerogative to shield the accused before prosecution and judgment. Some instances had also occurred in this country: he did not desire to trammel the prerogative of pardon, but only to have crime proved before it was forgiven.

Mr. Doddridge thought the reasons not satisfactory. In cases of riot, or extensive combinations to resist the law, a pardon might be a necessary means of obtaining testimony. There was not the same danger of abuse here as in England, because the officer having the pardoning power, is responsible for all his acts. The Executive is not a *"first estate,"* as in Europe. He moved to strike out the word *"Resolved,"* (in effect to destroy the resolution.)

Mr. Morgan insisted on his former ground, and stated the case where one Governor, (Desha) had pardoned his son without conviction or trial. He saw no danger of such combinations or conspiracies, as the gentleman had mentioned. He thought less danger would result from the adoption of the resolution than its rejection. No man ought to be pardoned without Judicial enquiry into his offence.

Mr. Doddridge admitted this as a general rule; but insisted that the public good might, in extraordinary cases, require a departure from it. He instanced the whiskey insurrection in Pennsylvania, and enquired what must have been the result, if the hands of the Executive had been tied up by such an article in the Constitution? The Attorney General would have had to file bills of indictment against a whole community. Suppose a civil war to be quelled by the arm of the Government, how was the country to be settled if such an obstacle as this stood in the way?

The question was then taken on striking out, and carried without a count.

Mr. Nicholas having, during the above debate, appeared and took his seat,

Mr. Mason moved that the Committee take up now the third resolution.

It was taken up accordingly, and again read as follows:

"Resolved, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council."

Mr. Henderson moved that the question on adopting the two members of the resolution be divided.

The Chair reminded him that no question would be taken on the resolution, unless some amendment should be offered.

Mr. Nicholas now moved the following amendment:

"Resolved, That the ninth and tenth sections of the present Constitution be retained, and that the eleventh be substituted by the following resolution:

"A Privy Council or Council of State, consisting of four members, shall be chosen by both Houses of Assembly, either from their own members, or the people at large, to assist in the administration of Government. They shall annually choose out of their own members a Lieutenant Governor, who in the case of the death, inability, or necessary absence of the Governor, from the Government, shall act as Governor. The Governor shall be the President of the Council, and shall in all cases of decision have the casting vote. Two members with the Governor, or Lieutenant Governor, as the case may be, shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present, (to any part whereof any member may enter his dissent) to be laid before the General Assembly when called

for by them. The members of the Council shall be elected by both Houses of the General Assembly for four years. At the first election, the two Houses shall, by joint resolution, divide the persons elected into two classes. The seats of the Councillors of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; so that one half may be chosen every second year; and if vacancies happen by resignation or otherwise, they shall be filled by the two Houses of the General Assembly. An adequate, but moderate salary, shall be settled on them during their continuance in office, and they shall be incapable during that time, of sitting in either House of Assembly."

Mr. Nicholas, without going into the general question as to the propriety of abolishing the Council, (having shewn at length his objections to it on a late occasion,) briefly explained the alterations he proposed to introduce. Leaving the number as at present, and also the manner of appointing the Lieutenant Governor; both which he considered as most promotive of economy, he would abolish what is called the "*scratch*," or dismissal of two members selected by the Legislature to go out at a given period: this he had always disapproved, as an ostracism very odious in its character, and often very injurious in its practical effect. He preferred classing the members, and letting their time of exclusion come on steadily, so as to avoid any hard feelings or invidious distinctions. He disliked the present arrangement in respect to the pay of the members, which was besides inoperative in practice, as by agreement among themselves, the total amount of salary is equally divided. He would do this by the Constitution. A more important change was to give the Governor the casting vote where the Council shall be equally divided. He concluded by a few general remarks on the responsibility of the whole Executive.

Mr. Giles now rose in support of the amendment of Mr. Nicholas, and contended with great earnestness against the abolition of the Council. He replied to an argument repeatedly urged by Mr. Doddridge, as to the very decided majority of the freeholders who had called the Convention. He had always doubted that there was any such majority actually in favour of the measure. Those who were contented with the present state of things had, in a multitude of cases, either not voted at all, or consented to the Convention out of a wish to indulge their neighbours: while those on the other side had been active and persevering, and had turned out to a man. He believed if the two first classes should be added to the minority, there would be a large majority in opposition to the whole affair. However this might be, he had not a doubt that now, after the exhibition made by this body, the majority would be very decided.

He then went into an examination of the responsibility of the Executive body—the relation of the Council to the Governor as advisers, and the liberty as well as personal responsibility of that officer; contending that a more responsible body, in every particular of all its acts, did not exist under the sun—and challenging the gentlemen on the other side to devise, if they could, any conceivable mode to make persons more responsible. Every act and every advice had to be recorded and signed, submitted annually to that body from whom they received their office, and then published to all the world. Nay, the principle was carried even to harshness; in the instance of the *scratch*, or ostracism of the Council: a measure shewing, however, the wise caution of the framers of the system, and one which had a powerful, though not a pleasant influence as a stimulant to duty. He was willing to have this feature softened. Nor was the impeachment of the Governor so arranged, that before it could be issued, he was out of office. It did not commence till he was out of office, and then it might disqualify him from office for the rest of his life. What more would they desire an impeachment to effect?

He then went into a review of the power of the Executive. He referred to the mass of incidental power thrown into its hands every year by the orders of the Legislature, and the satisfactory manner in which it had always been exercised; on which point he adverted to the late quotations from the Legislative Journal, and the result in triumphantly vindicating the parties accused. He touched on the power of the Lieutenant Governor—and on the abortive attempt to improve the nature of his office—the new plan gave him no duties at all. As to substituting the Attorney General, the Treasurer and Auditor as a Council, he scouted the idea. The first of these officers is now the Governor's official adviser, and the other two, it is his business to watch over and controul, (and this had been so done as to detect great defalcations and save much money to the Commonwealth.)

The pardoning power had been discussed by Mr. Nicholas. The administration of the Contingent Fund was, in practice, the scrutiny of a miser over his gold: accounts were sifted down to a dollar, insomuch that the money-hunters had given up the Council entirely.

Mr. G. then went into an earnest remonstrance against pulling down an institution full of wisdom, tested by fifty-four years' experience, and which defied scrutiny. When called to build up something in its place, they flinched, and could not agree.

Some wished to assimilate the Executive of this State, to that of the United States, which he viewed as neither more nor less than a limited monarch. Mr. G. here went into the practical effects which had been produced in the General Government by Executive patronage, &c. and deprecated the introduction of similar evils into Virginia. He adverted to the Executive of Pennsylvania, as furnishing a similar illustration, though on a smaller scale. He concluded by forcibly pressing the responsibility under which every member was acting, and the solemn results to himself and to posterity.*

The Convention now became involved in a labyrinth of questions of order which suspended all actual business for a long time; the particulars of which can be of no interest to the public. They at length became extricated by a motion of Mr. Powell to strike out the last clause of the resolution reported by the Executive Committee, viz: "*and that it is inexpedient to appoint any other Executive Council.*"

The question being taken on this question, it was *carried*: Ayes 55.

[So the Committee determined that it is *expedient* there shall be a Council: and by leaving the first clause standing, viz:

"*Resolved*, That the Executive Council as at present organized, ought to be abolished:" They did virtually determine, that the Council shall *not* be constituted *as at present*.]

Mr. Nicholas now moved to amend the resolution by adding thereto the following:

"*Resolved*, That the ninth and tenth sections of the present Constitution be retained, and that the eleventh be substituted by the following resolution:"

"A Privy Council or Council of State, consisting of four members, shall be chosen by joint ballot of both Houses of Assembly, either from their own members, or the people at large, to assist in the administration of Government. They shall annually choose out of their own members, a Lieutenant Governor, who in case of the death, inability, or necessary absence of the Governor from the Government, shall act as Governor. The Governor shall be the President of the Council, and shall in all cases of division, have the casting vote. Two members, with the Governor or Lieutenant Governor, as the case may be, shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present (to any part whereof, any member may enter his dissent) to be laid before the General Assembly, when called for by them. The members of that Council shall be elected by joint ballot of both Houses of the General Assembly, for four years. At the first election the two Houses shall by joint resolution, divide the persons elected into two classes. The seats of the Councillors of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; so that one half may be chosen every second year; and if vacancies happen by resignation, or otherwise, they shall be filled by joint ballot of the two Houses of the General Assembly. An adequate, but moderate salary, shall be settled on them during their continuance in office, and they shall be incapable during that time, of sitting in either House of Assembly."

The question was taken without debate, and decided in the negative: Ayes 32, Noes not counted.

(Messrs. Monroe, Marshall and Giles, in the affirmative; Mr. Madison in the negative.)

So Mr. Nicholas's amendment was rejected.

Mr. Leigh now enquiring, what sort of a Council gentlemen wished?

Mr. Fitzhugh referred him to section eleventh of Mr. Powell's substitute:

"Sect. 11. The Governor shall have power to require in writing, the opinions of the Lieutenant Governor, and of the Attorney General, upon all matters appertaining to the duties of his office."

Mr. Leigh denied that this was any Council at all. The Governor had now the right to ask counsel where he pleased. The Attorney General answered him officially—but other lawyers were frequently consulted, and who would refuse?

Mr. Fitzhugh said, the plan made it obligatory, and did not leave it a mere act of courtesy.

Mr. Leigh thought the difference immaterial in practice. His idea of a Council was, that they *must* be consulted, and that the Governor must act according to their official advice.

After some conversation between Messrs. Leigh and Powell,

Mr. Brodnax moved a modification of the proposition, which had been offered by Mr. Nicholas, viz:

"A Privy Council or Council of State, consisting of _____ members, shall be chosen by both Houses of Assembly, either from their own members, or the people at large, to assist in the administration of Government."

His wish was to fill the blank with an odd number, three or five.

* For a more extended report of Mr. Giles's speech, see the *Appendix*

Mr. M'Coy said, as it seemed pretty generally determined, that a Lieutenant Governor there is to be, somehow or other, he made the suggestion, whether it would not be well to give to him the duties now performed by the Council? He presumed it was not the plan to have a Lieutenant Governor, who should only be the President of a Bank, and act in case of the Governor's death. He ought to have some duty, which continually devolved on him; and he could not imagine any thing better for him to do, than to perfect himself in his knowledge of the office of Governor, by acting as his Council. He would make the Lieutenant Governor a substitute for the Council.

Mr. Mercer suggested to Mr. Brodnax, as a difficulty growing out of his plan, that if the Council were all in attendance, and the number uneven, the Governor must either have two votes, or in fact none at all; and if the advice of the Council is to be made binding, where is his power? If any thing was to be considered as settled in Republican Government, it was, that the Executive should derive its power from the people, and be responsible to them; and that being thus responsible, should be so constituted, as to have unity and efficiency. Such were the principles laid down in the Federalist; there he had learned them; nor had but a single State in the Union, since the publication of that work, adopted the feature of an Executive Council; in others, it had been abolished.

Mr. Brodnax replied—this was a matter of detail to be settled afterwards—some might be sick or absent, it was rarely that all the members of any deliberative body were in attendance. Some of the members of the Convention had been so rude as to get sick and confine themselves to their rooms. As to the Governor, he must never die: it would be infamous—treason—a desertion of his post: for, no substitution had been provided. As to the idea of the Lieutenant Governor's performing the duties of the Council, it seemed to him very strange. He drew a picture of "the Governor and Lieutenant Governor *tete a tete*, warming their toes before the fire," and then represented the Governor as bound to take the advice of the Lieutenant Governor, and so the latter would rule.

Mr. Nicholas replied to Mr. M'Coy—and stating the Lieutenant Governor to be, politically, a nonentity unless in case of the Governor's death, asked how he could be his Council? If he was to be always ready to act in case of the Governor's absence or death, he must always be on the spot, and have a competent salary—and so be a charge on the State while he did nothing.

Mr. N. then read a section of an act empowering the Governor to supervise the Auditor, Treasurer, &c. and to demand the advice of the Attorney General.

Mr. Leigh now took the floor in earnest defence of the Council as one of the most important features of the Constitution, the preservation of which was essential to the peace of the Commonwealth. He compared the plans of a Council whose advice the Governor shall be obliged to obtain, (then acting on his own responsibility) and a Council whose advice he might ask or not at pleasure. He warmly defended the existing plan as calculated, first, to divide the power of Executive patronage, so as to render it innocuous; second, to supply to a Governor new in office a mass of experience in the details of police, and of information essential to the right discharge of his duty; third, to give him mature and recorded advice on all his official acts—advice he was compelled to ask, and by which he was usually governed, though free to disregard it if he was willing to risk the responsibility.

This last, he contended for as the vital principle of the present Executive system. He dwelt on the virtues which had adorned this Council; the assiduity with which they had attended to their duties, and the happy effects to the public peace which had grown out of this system for fifty-four years. Not a charge could be substantiated to shew usurpation or oppression: on this subject he reiterated his challenge to the world, professing to stand ready at any moment to meet and refute the charge. He deprecated it as the very wantonness of innovation to destroy such an institution, which had continued through two wars, in the most anxious period of the world's history, without a single act of oppression. Could as much be said for any Executive on earth beside? He adverted to one of their acts of mercy in pardoning a criminal—he thought they had erred—but it was not to save a rich or influential delinquent, but a poor despised slave. (Here he quoted Sterne with happy effect.) He earnestly pleaded, for the love of Heaven, that the Committee would not, when in perfect political health, venture on such an experiment upon the happiness of the Commonwealth. He concluded a very impassioned address, by saying that he felt bound to say thus much, to save an institution he had always viewed next after the Freehold Suffrage, and the happy system of County Court police, as the distinguishing excellence of the Commonwealth. Give me, said Mr. L. this plural Executive: give me the neighbourly tribunals of the County Court system, which bring justice to every man's door almost free of expense: and give me, finally, the power of Government in the hands of the independent yeomanry of the State; and I will be content that you modify or abolish all the rest at your pleasure.

Mr. M'Coy explained in reply to Mr. Brodnax, who, he thought, had treated his suggestion rather cavalierly.

Mr. Brodnax explained in reply, disclaiming the least intentional disrespect. As a close to Mr. Leigh's appeal, he promised an *anecdote*: and then referred to the well known epitaph, "I was well—seeking to be better—I took physic—and here I am."

Mr. Johnson explained the grounds on which he had voted against the proposition of Mr. Nicholas, and should vote against it as now modified. He was not decidedly of opinion, that the Council as now organized ought to be abolished: he would not say that he should never so vote under any circumstances, but never until some plan should be proposed which his mind could prefer.

Mr. Mercer said, he now rose for the first and last time, to make his protest against the assertion, so often repeated, that the friends of a different organization of some features of the Government meant any *wanton innovation* in the existing Constitution; and against the assertion, made before, and now repeated, that because no specification of examples of the abuse of power had been brought forward, that it was, therefore, to be inferred, that gentlemen on his side of the House, '*dare not*' make the attempt. He said thus much, lest his silence might be construed into an acquiescence in the truth of such a position.

Mr. RANDOLPH then addressed the Committee nearly as follows:

I was of opinion, before I came to this Assembly, that this species of legislation was an anomaly. I did not expect to find introduced here, the practice which obtains in the British House of Peers; where every member—every noble Lord—representing his noble self, is at liberty to enter his protest on the Journal of the House, against any thing he happens to disapprove.

I don't know where the protest of the gentleman over the way is intended to be inscribed; but, inscribe it where he will, there are none who will remember it to-morrow.

Sir, I have been brought by experience—and especially by recent observation, to the conclusion to which a man of sense and reflection might have arrived *a priori*—that of all the mechanists under the sun, Constitution-makers least understand their own trade. We have given, I think, to all the world, most ample evidence of our unfitness—I do not say to *make* a Constitution—but I was almost about to say, to *tinker* the old Constitution we have. Sir, I am well satisfied that this Assembly has already lost—and is daily losing the confidence of the people of Virginia. It becomes not me to pass an eulogium on the wisdom and the worth of many of those who compose it; but the truth is, such is the wisdom of our existing form of Government, that no proposition can be brought forward with a view to make an inroad upon it, that can command a respectable majority: when I say respectable, I refer, of course, to numbers only—not one, that can get in its favor, a respectable majority—and yet, nothing short of an *overwhelming* majority, can reconcile the people of Virginia to any important change in their fundamental law.

I did vote, reluctantly, for the proposition of the gentleman from Richmond; but I had almost risen from my seat to move to strike out the clause for abolishing the Council. It has been better said, than I am capable of saying it, that the lust of innovation—for it is a lust—that is the proper term for an unlawful desire—this lust of innovation—this *rerum novarum libido* has been the death of all Republics. All men of sense, ought to guard and warn their neighbours against it. Sir, I have felt deep affliction—mortification—and humiliation, at seeing this venerable fabric of our Government treated with as little ceremony as a mouse in the receiver of a natural philosopher and experimenter. There are some things which ought to be changed. I had hoped we should at length have come to the source of the disease—which is to be found in the Judicial body. It is because of the delay—the delay *ad indefinitum*—I speak it with feelings the most respectful toward those—and there are such—who have faithfully discharged their duty; but it is the want of that faithful discharge of it, in too many, which has brought all this about. Sir, it is *there* we ought to apply the remedy. But I am going away from the point before the Committee.

I rose to move, and when in order, I shall move you, to strike out the whole of the resolution.

Sir, our discussions here have brought to my recollection that beautiful apologue, or fable, of Addison's, where he represents the whole human race as summoned by Jupiter into one assembly—the God listens to their various complaints, and then gives permission to each to lay down his own grievance and take up any that he chose to select among those deposited by his neighbours. A very handsome well-made man lays down a disease under which he labours, and takes up the deformity which a hump-backed man had thrown off: A mother brings her undutiful son—a wife her bad husband. A husband comes with his shrew of a wife, and selects another partner, who, as he believes, will suit him better. All were anxious to make the change; for it is human nature, Sir, to view all the miseries of others as very easy to be endured; yes, Sir, nothing is so easy as to endure other people's evils, unless it be to spend

other people's money. The assembly broke up well pleased, and each returned to his home to try his altered situation. But, Sir, what was the issue? In a little time they all came back again. The once handsome man came to be set free from his hump—the diseased man to take it back again: The lady brought her new husband, and the man who had before brought his shrew of a wife, came back to seek her again: declaring that long habit and intimacy had so cemented their union, that the *old woman* was the best companion after all.

(Here loud laughter was heard in the gallery, and the Chair repeatedly called to order.) Sir, I mean no pleasantry on such a subject: but what I mean is this; that there is not now a mal-content in the Commonwealth, who, after this new Constitution shall have been adopted, will not in six months more be just as much dissatisfied and more than he is now. But even if I am mistaken in this, recollect what a vast minority you must have opposed to your plan. I believe there is a majority who are well satisfied with the Council they have had for these fifty-four years, and who will see it abolished with regret. Recollect that change is not always amendment. Remember that you have to reconcile to new institutions the whole mass of those who are contented with what they have, and seek no change—and besides these, all the disappointed of the other class; and what possible chance is there that your new Constitution can be accepted? If you change the existing form of your Executive, your Governor may come to the most important decisions at the most unguarded moments. Publicity is the guardian of virtue. He cannot now decide in secret, where no eye is upon him but that eye, which we are all too apt to forget. It is in privacy that the deepest and most damning crimes are perpetrated. The man who is going to commit wickedness, ever shrinks from the eye of his neighbour. Gentlemen tell us of the economy of this new Constitution—by abolishing the Council and retrenching the numbers of the House of Delegates, they are to save the Commonwealth a matter of some 5 or 6,000 dollars. Why, Sir, the expense of this Convention, placed in the funds, would pay the salaries of the Council forever—yes, Sir, forever.

These savings made by paring down the Legislature, and lopping off the Council, may not prove to be true economy. Remember the fable—if the sheep will not spare enough of their fleece to feed the dogs, they may have to spare the whole of it, and the carcass to boot, to the wolf.

Mr. Mercer said, that he had felt it his duty to maintain silence under the repeated challenges so pointedly made on the other side, as long as silence was possible: yet to guard against the imputation of acquiescence in the views expressed in the remarks of the gentleman from Chesterfield, he had used a form of expression common to the humblest individual in the humblest assembly, by saying that he protested against such an imputation: and now he had been told, that his protest, made to-day, would be forgotten to-morrow; and this in a tone and manner, to which he could not but take exception. Humble as his station might be, he had constituents, whose eye was upon him; who watched over all his official conduct: and he could have stated several abuses, which had been practised in special relation to them: having enjoyed the manifestation of their favour and affection, for more than twenty years, during which time it had never been intermitted, he felt bound to take care that his conduct should not be misunderstood. Hitherto, he had done nothing which had induced them to withdraw their confidence from him, and he trusted he never should.

The question was now taken on the amendment proposed by Mr. Brodnax, and decided in the negative—Ayes 39, Noes not counted.

Mr. Monroe and Mr. Marshall *Aye*, Mr. Madison *No*.)

Mr. Randolph now moved to strike out the whole of the resolution, in order, that should it prevail, the field might be clear, and gentlemen have a *carte blanche* before them.

The question being taken, it was decided in the negative—Ayes 39, Noes 53.

Mr. Fitzhugh now moved the following amendment:

After these words, "*Resolved*, That the Executive Council, as at present organized, ought to be abolished," add *these words*, "and that the Governor shall have power to require in writing, the opinions of _____ upon all matters appertaining to the duties of his office."

The amendment was adopted—Ayes 50.

(Mr. Madison in the affirmative.)

The Convention having now acted upon, or else resolved, for the present, to pass by all the resolutions of the Executive Committee,

Mr. Powell expressed a desire to present and to discuss his substitute, on the subject of the Governor and Lieutenant Governor, which he had offered in the Executive Committee: but Mr. Henderson suggesting that it was now too late an hour (three o'clock) to enter on that discussion, moved that the Committee rise.

It rose accordingly, and thereupon the House adjourned.

MONDAY, NOVEMBER 30, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Sykes, of the Methodist Church.

Mr. Upshur of Northampton, submitted as a proposition for a compromise, the following:

"Resolved, That the House of Delegates shall consist of one hundred and twenty members, of which there shall be chosen for the first district, or district West of the Alleghany Mountain, 26
For the second district, or district of the Valley, 22
For the third district, or district between the Blue Ridge and Tide-water, 38
For the fourth district, or district between the head of Tide-water and the Ocean, 34

"Resolved, That the Senate shall consist of thirty members, of which there shall be chosen for the first district aforesaid, 7
For the second district aforesaid, 6
For the third district aforesaid, 9
For the fourth district aforesaid, 8

"Resolved, That the Legislature shall have power to re-arrange the Representation in both Houses of the General Assembly once in every years upon a fair average of the following ratios, to wit: 1st, of white population; 2d, of white population and taxation combined; 3d, of the Federal numbers: *Provided*, That the number of the House of Delegates shall never exceed one hundred and sixty, nor the number of the Senate forty."

Mr. Upshur accompanied this proposition with a few remarks in explanation of its principles. He referred to the three parties into which the House had been divided, viz: those who were in favor of the basis of white population exclusively; those who were in favor of the basis of white population combined with taxation, and those who were in favor of the basis of Federal numbers. He stated his own plan to be an average, as nearly as was practicable, of all these three ratios. He had carefully abstained from introducing simple taxation as an element, being anxious to conciliate as far as possible, the feelings of Western members, and desiring to offer every concession on his own part, which was possible, without a total sacrifice of principle, and an utter disregard of those great interests which it was the object of all parties to protect. He said it was obvious that the basis, thus presented by him, must operate favorably to those portions of the country which were increasing most rapidly in all the elements of which the basis was composed. In effect, he would not doubt that the power now held by the East, would in a few years only, be transferred to the West. He had not, however, made any calculations upon the subject, founded on our statistical tables. He had purposely avoided every thing of the kind. He could not tell, nor did he desire to know, whether the West would possess a majority in the Legislature in one year or in fifty years. He presented his basis as a just and fair compromise among all parties, and being just and fair in principle, he left its operation upon the several divisions of the State, to future times. So far as the Senate was concerned, his Western friends would perceive at a glance, that his proposition was much more favorable to them than any other which had been offered. With this explanation of his views of the principles of the measure he proposed, he moved that his resolutions be referred to the Committee of the Whole, and printed for the use of the members. This was accordingly done.

Mr. Leigh now submitted the following with a like view. He insisted only on the principle on which it proceeded. And was willing if that was preserved, that the details should be modified:

"That Representation in the House of Delegates be apportioned as follows:

"The twenty-six counties lying West of the Alleghany shall have twenty-six Delegates;

"The fourteen counties lying between the Alleghany and Blue Ridge shall have twenty-three Delegates;

"The twenty-nine counties lying East of the Blue Ridge and above tide-water shall have forty-two Delegates;

"And the thirty-six counties and four towns lying on tide-water shall have thirty-five Delegates.

"No more new counties shall ever be formed of the territory lying East of the Blue Ridge of mountains; but the Legislature may in its discretion from time to time, a majority of the whole number of both Houses concurring, whenever the increase of the population of the country West of the Blue Ridge and the more convenient administration of justice and police may require, form new counties, not exceeding eight, out of the territory West of the Blue Ridge, and whenever any such new county shall be formed, an additional Delegate shall be allowed to the country West of the Blue Ridge.

"And the Legislature, having regard to the relative state of the population of the respective counties, cities, and towns, and three-fifths of both Houses always concurring, may, at any time, form two or more contiguous counties, into one district, for the election of one Delegate; and may allow one or more additional Delegates to any county, city, town, or district, so that none shall ever be allowed more than four Delegates; and may reduce the number of Delegates which may or shall be allowed to any county, city, or town, to which more than one Delegate may in the first instance be allowed, so that each be allowed at least one: *Provided*, That the number of the House of Delegates shall never exceed one hundred and fifty."

Mr. Cooke, at the request of sundry members from the Western and middle parts of the State, submitted the following proposition for compromise, which he stated to be the result of an earnest, honest, and laborious comparison of opinions among members from that portion of the State, and to have the support of a large portion of those who were the friends of the white basis:

"*Resolved*, That in the opinion of this Committee, the Legislative Department of the Government of this Commonwealth, should consist of a Senate containing thirty-six, and a House of Delegates containing one hundred and twenty members.

"That the principle of Representation in the House of Delegates should be equal Representation, as nearly as may be, of the free white people in every part of the Commonwealth.

"That the principle of Representation in the Senate should be equal Representation, as nearly as may be, of all free persons taken in connection with three-fifths of all other persons, in every part of the Commonwealth; or, in other words, the equal Representation, throughout the Commonwealth, of what is familiarly called 'Federal numbers.'

"That an apportionment should be made, as soon as may be, after the next census which shall be taken under the authority of the United States, of the members of the two Houses respectively, on the principles above stated throughout the Commonwealth.

"That in default of a census by the Government of the United States, in 1830, or at any future Constitutional period, it should be the duty of the Legislature to cause a census of the population of this Commonwealth to be taken, as soon as may be after such default shall occur.

"That it should be competent to the Legislature to substitute a census made under the authority of the State, for the Federal census, if the latter, after it shall have been taken, shall be considered by the Legislature as inaccurate or imperfect: *Provided, however*, That the next ensuing Federal census, or that of 1830, shall be definitely taken, as the basis of the first apportionment.

"That there should be, as soon as may be, after the organization of the Government under any new Constitution, or any amended Constitution which shall be adopted by the people of Virginia, on the recommendation of this Convention, and at the expiration of every ten years thereafter, an assessment of all the lands subject to taxation, within the limits of the Commonwealth."

This scheme, continued Mr. C. for apportioning Representation throughout the Commonwealth, on the principle of *compromise*, has one recommendation which entitles it to the respectful consideration of the House. It is the result of an earnest, honest, and laborious investigation and comparison of opinions, made by a very considerable number of members from the middle and Western districts, and indeed, by nearly all those who voted for what is familiarly called "the white basis" of Representation, as the rule of apportionment in the House of Delegates.

We had not been long assembled in this place, said Mr. C., before the character and views of the two parties which divide the House were distinctly seen. One of these parties, distinguished by brilliant talents, and respectable, even for its numbers, but still a small minority, was opposed to all change whatsoever. Some of them, because they considered the Constitution under which we have lived for more than half a century, as perfect as any institution merely human, can well be; others, because they thought that its defects were more than counterbalanced by its valuable features, and that it was better, as they themselves expressed it, "to bear the ills we have, than fly to others that we know not of."

A far more numerous party in the House, the "friends of reform," or of "innovation," if gentlemen like the term better, were of opinion, that the Constitution was defective in many important points, and required material amendments. But this party too was subdivided: while a small portion of it was content with minor changes, a great majority of this more numerous party, and almost one half of the House, came hither with the fixed and deliberate opinion, that the principle of Representation proclaimed in the Declaration of Rights—the principle of the equal Representation of the free white population of the State, was the only true Republican principle, and one, which could not be departed from in the organization of either one or the

other of the Legislative bodies, without deeply impairing the strength and durability of our Republican institutions.

Deeply impressed with the correctness of these opinions, they adhered to them with a pertinacity corresponding with the strength of their convictions. Discovering, at length, however, the utter improbability of rallying round their standard, a majority of the House, they have abandoned the effort in despair. They see the alternative presented to them, of returning to their constituents without having accomplished *any thing*, or of endeavouring to find some *middle ground* on which the conflicting parties may meet and be reconciled. Every feeling of patriotism, every suggestion of sober reason, concurred in recommending the latter course, and they resolved to adopt it.

After repeated conferences they formed a compromise basis of Representation, that which I have just read, and determined to offer it, in the true spirit of compromise, and with the hope of being met in a similar spirit, by their brethren of the East and the South. They have abandoned, in fact, a principle which is inexpressibly dear to them, and in the feeling of expanded patriotism, have offered it up as a sacrifice on the altar of the public safety. They have seen not this House only, but the whole people of Virginia divided, distracted, and fevered for many weeks, by this harassing and dangerous question; and they seek, by offering this compromise, to quiet these alarming dissensions, and restore peace and tranquillity to the Commonwealth. It remains to be seen, whether they will be met in a similar spirit, by their brethren of the East and South.

I can assure gentlemen, that there are slender grounds for hoping, that either of the plans of compromise this day offered by the gentlemen from Chesterfield and Northampton, will be satisfactory to those, who have, after mature deliberation, determined to offer the plan which I have just presented to the House. If it shall unhappily fail to meet the approbation of those to whom it is offered, what will be the result? We shall separate, having done nothing to allay the ferment of the public mind; and *worse than nothing*. We shall return to an angry and divided people. We shall be asked by our constituents, what evil spirit pervaded our councils to prevent us from adopting a Constitution which should heal the division, and restore the tranquillity of the Commonwealth. And what answer shall we give? Is it not obvious that each party, that each member of this body, will seek to throw on the opposite party, and on other members, the blame of having produced this lamentable result? Is it not obvious that crimination and recrimination will become the order of the day? that the country will be inundated with inflammatory addresses? that party epithets will be bandied about, and party hatred inflamed to the highest degree of inveteracy? And can any man who loves his country, contemplate the results which are likely to ensue from such a state of exasperation in the public mind, without a feeling of dismay? I implore all those who love their native State; all those who are willing to make *some* sacrifice of their preconceived notions on the altar of the public safety; *some* compromise of opinion in the formation of our organic law; to rally round the compromise now offered, which has already received the approving sanction of so large a portion of this assembly. Let us resolve, before this week shall close, to settle, and to settle amicably and forever, the differences which have so long distracted the Commonwealth. Let us form a Constitution which will unite the people of Virginia as a band of brothers. Let party names, and party criminations and recriminations, be buried in eternal oblivion. Let us hear no more of Eastern men, and Middle men, and Western men; let us hereafter be Virginians and brethren.

The resolution was referred to the Committee of the Whole, and ordered to be printed.

In reply to a quære of Mr. Henderson, Mr. Leigh stated it to be his purpose to carry the same principle out in its application to the Senate, which he had proposed for the House of Delegates.

Mr. Cooke proposed an adjournment to to-morrow, with a view to the consideration of the several proposals which had been submitted; but withdrew his motion at the request of

Mr. Doddridge, who suggested that there might be other gentlemen who wished to submit *projets* of a similar kind.

Mr. Campbell of Brooke then submitted the following preamble and plan, which he prefaced with some remarks on the course of debate hitherto, and the relative position and offers of the two great parties in the Convention:

Much has been said in this Committee on the subject of compromise. We confess that we have heard nothing proposed as yet, which deserves the name of *compromise*. As we understand that word, it imports mutual concession; as yet, the concessions have been required from one party, from the Representatives of the West. We of the West have in Committee of the Whole, carried one principle, and only one, in one branch of the Legislature, that is, the principle of *equal* Representation in the House of Delegates. This has not been granted to the West in the spirit of compromise, but by the decisions of immutable justice. The controversy now is about the

same principle in the Senate. We are asked to compromise this principle in the Senate. Now, had the East conceded to us this principle in the House of Delegates, they might have asked us to concede something to them in the application of this principle in the organization of the Senate. But they did not, we gained it so far without any concession on their part. But now, we are required to make the whole concession on our part of this principle to the East. This is not, as we think, compatible with any just interpretation of the term compromise. If, however, the East had carried without our concession, the principle of Federal numbers in the Senate, we would have then been on equal ground, and both parties might have fairly talked of and entered into a compromise. We of the West would still be placed in awkward circumstances, because we would be called upon to compromise a principle, which, as republicans we can never, without apostasy from our faith, and a renunciation of our principles, yield. Our brethren of the East have as they think to compromise, no republican principle: they admit, that the principle for which we contend is a just principle and a republican principle, were there no peculiar property, or peculiar interest in the way. But contemplating the local interests of the East and the West, and the different states of the East and the West, they argue that the principle for which we contend would be unjust and oppressive, or tend to injustice and oppression upon them in the future application of it. This is, we think, a fair statement of the case.

Now, with the utmost deference to these arguments and reasonings, with the most conscientious regard to our own principles, and in the true spirit of conciliation and compromise, we tender the following scheme:

1. "The whole State shall be divided into one hundred Delegate districts, and twenty-four Senatorial districts, after each and every census, according to the white population; so that the House of Delegates and the Senate shall never exceed together, more than one hundred and twenty-four members.

2. "The taxes imposed upon every species of property shall be *ad valorem*, and on a fixed ratio between real and personal property.

3. "The appropriations of the revenue for any other purpose, than the payment of the expenses of Government, for any improvements East or West of the Blue Ridge, shall be always in exact proportion to the amount of taxes paid by the citizens East and West of that Ridge of mountains.

4. "The revenue resulting from any improvements which shall hereafter be made in the East or the West, shall belong to that section of the State in which said improvements are made.

5. "Any roads which may be made over the Blue Ridge mountain, shall be made at the expense of the whole State, in equal proportion to the taxes paid by the Eastern and Western divisions of the State; and the tolls thence accruing, shall, in the same proportion be distributed between the East and the West."

These propositions are made in the spirit, and we humbly think, upon the fair and just principles of conciliation and compromise. We would appeal to the good sense of the citizens of every section of the State; to the citizens of the whole United States; nay, to the Universe itself, for the justice and impartiality of the scheme proposed. If there is in it any latent principle of injustice, we see it not; we know it not; but upon the detection and exposition of such a principle, we would most cordially renounce it. We ask for nothing, we propose nothing, which we know of, dishonourable to us or to our brethren.

We need not be told that such a scheme would be inefficient, being only inscribed upon parchment; for if that were true, there is no use for, no security in, any instrument called Constitution, bond or covenant, which human hands can sign and seal.

We tender this scheme of compromise now at the eleventh hour, having waited for a full disclosure of the sentiments and views of more mature minds; but nothing having been yet tendered, which at once saves our principles and secures the interests of all, we have felt it our duty to submit the above, and submit it with all deference, to the revision and modification of every gentleman, who can improve it, without changing the principles which it recommends.

MR. MARSHALL now rose, and addressed the Committee nearly as follows:

Mr. President: No person in the House can be more truly gratified than I am, at seeing the spirit that has been manifested here to-day; and it is my earnest wish that this spirit of conciliation may be acted upon in a fair, equal and honest manner, adapted to the situation of the different parts of the Commonwealth, which are to be affected. As to the general propositions which have been offered, there is no essential difference between them. That the Federal numbers and the plan of the white basis shall be blended together so as to allow each an equal portion of power, seems to be very generally agreed to. The difference is, that one party applies these two principles separately, the one to the Senate, the other to the House of Delegates, while the other party proposes to unite the two principles, and to carry them in their blended form through the whole Legislature. One gentleman differs in the whole outline of

his plan. He seems to imagine that we claim nothing of republican principles, when we claim a representation for property. Permit me to set him right. I do not say that I hope to satisfy him or others, who say that Republican Government depends on adopting the naked principle of numbers, that we are right; but I think I can satisfy him that we do entertain a different opinion. I think the soundest principles of republicanism do sanction some relation between representation and taxation. Certainly no opinion has received the sanction of wiser statesmen and patriots. I think the two ought to be connected. I think this was the principle of the revolution: the ground on which the Colonies were torn from the mother country and made independent States.

I shall not, however, go into that discussion now. The House has already heard much said about it. I would observe, that this basis of Representation is a matter so important to Virginia, that the subject was reviewed by every thinking individual before this Convention assembled. Several different plans were contemplated. The basis of white population alone; the basis of free population alone; a basis of population alone; a basis compounded of taxation and white population, (or which is the same thing, a basis of Federal numbers:) two other bases were also proposed, one referring to the total population of the State, the other to taxation alone. Now, of these various propositions, the basis of white population, and the basis of taxation alone are the two extremes. Between the free population, and the white population, there is almost no difference: Between the basis of total population and the basis of taxation, there is but little difference. The people of the East thought that they offered a fair compromise, when they proposed the compound basis of population and taxation, or the basis of the Federal numbers. We thought that we had republican precedent for this—a precedent given us by the wisest and truest patriots that ever were assembled: but that is now past. We are now willing to meet on a new middle ground beyond what we thought was a middle ground, and the extreme on the other side. We considered the Federal numbers as middle ground, and we may, perhaps, now carry that proposition. The gentleman assumed too much when he said that question was decided. It cannot be considered as decided, till it has come before the House. The majority is too small to calculate upon it as certain in the final decision. We are all uncertain as to the issue. But all know this, that if either extreme is carried, it must leave a wound in the breast of the opposite party which will fester and rankle, and produce I know not what mischief. The majority, also, are now content once more to divide the ground, and to take a new middle ground. The only difficulty is, whether the compromise shall be effected by applying one principle to the House of Delegates, and the other to the Senate, or by mingling the two principles and applying them in the same form to both branches of the Legislature? I incline to the latter opinion. I do not know, and have not heard, any sufficient reason assigned for adopting different principles in the two branches. Both are the Legislature of Virginia, and if they are to be organized on different principles, there will be just the same divisions between the two, as appears in this Convention. It can produce no good, and may, I fear, produce some mischief. It will be said, that one branch is the representative of one division of the State, and the other branch of another division of it. Ought they not both to represent the whole? Yet I am ready to submit to such an arrangement, if it shall be the opinion of a majority of this House. If this Convention shall think it best that the House of Delegates shall be organized in one way and the Senate another, I shall not withhold my assent. Give me a Constitution that shall be received by the people; a Constitution in which I can consider their different interests to be duly represented, and I will take it, though it may not be that which I most approve.

While I agree in the main to the proposition offered by the gentleman from Chesterfield, there are some slight objections to it. It is not perfectly equal, if you take the census of 1820, as the basis of computation. I have prepared no plan to be laid before the House, but have made some calculations as a guide for my own judgment, going to show what the apportionment ought to be on the basis he has assumed. His ground is that the ratio ought to be an exact compromise of the principle of white population, and that of the Federal numbers. I have endeavoured to calculate the result of such a ratio. The whole white population being six hundred and three thousand and thirty-one, and the House of Delegates consisting of one hundred and twenty-six, each member will represent four thousand seven hundred and ninety-one white persons. The country west of the Blue Ridge having one hundred and thirty-three thousand one hundred, will be entitled to twenty-seven members and a large fraction: I have therefore allowed them twenty-eight. The Valley containing one hundred and twenty-one thousand and ninety-six white persons will be entitled to twenty-five members. The country between the Blue Ridge and tide-water, having one hundred and eighty-nine thousand three hundred and fifty-six free whites, will be entitled to thirty-nine members and a large fraction: I therefore allow that part of the

State forty Delegates. The tide-water country containing one hundred and fifty-nine thousand five hundred and seventeen, will be entitled to thirty-three Delegates. This will be the ratio, taking the free white population as the basis.

Let us now assume as the basis the Federal numbers. The whole State contains eight hundred and ninety-five thousand and three Federal persons. Each member will, therefore, represent seven thousand and thirty-one Federal persons. The Western district containing one hundred and forty-two thousand one hundred and forty-seven of such persons, will be entitled to twenty Delegates. The Valley containing one hundred and forty-two thousand and eighty-three, will also be entitled to twenty Delegates. The middle country three hundred and thirty thousand and twenty-five, will be entitled to forty-five and a large fraction, say forty-six. The tide-water country, containing two hundred and eighty thousand six hundred and nineteen, will be entitled to thirty-nine.

Now, Sir, I added these several results of the white basis, and of Federal numbers, and I divided the amount by two, which gave me the following, as the average of the two ratios :

For the Western district, 24 Delegates.

For the Valley, 22½, say 23.

For the Middle Country, 43½, say 43.

For the Tide-water Country, 36.

I think if we do adopt an exact compound of these two ratios, we ought to carry the principle through, and take the above numbers, unless I have committed some arithmetical error—it is possible I may, but I think I have not. The principle, then, which I propose as a compromise is, that the apportionment of representation shall be made according to an exact compound of the two principles, of the white basis and of the Federal numbers, according to the Census of 1820. There can be but one objection to this calculation. It is that the Census of 1820 is not the Census of 1829. I admit it. But every thing of the population of 1829 considered as a basis is so much conjectural, that it will be difficult to come to any satisfactory result. I take the Census of 1820, as preferable to such a conjectural basis. If it produces injustice, that injustice will be temporary and of short duration. The proposition of the gentleman from Chesterfield, which has my perfect approbation with this exception, allows an immediate increase of numbers to that part of the State which must suffer by the Census of 1820. It cannot do permanent injustice to them ; perhaps not for a moment ; and even if it should, the other part of the plan will effectually remove it. Should there be any injustice, it must speedily be removed by a new Census. I wished to avoid going into the detail of the apportionment in each county. That may be left to the first Legislature which shall assemble under the amended Constitution. Let the first House of Delegates be constituted of five Representatives from each Senatorial district, you will then have a House consisting of one hundred and twenty Delegates, who will be more competent than ourselves, to apportion the total representation among the counties, and who can more appropriately perform that office. I should regret to see the time of the Convention wasted in balancing the controversies of the counties. I barely throw this out, however, for consideration. I only wish, that the calculations may be understood by the Convention, together with the principles on which they have been made. It will be necessary to carry the substance of this calculation in mind, before we form a definite judgment on the estimates which differ from it.

MR. LEIGH'S Plan is a House of 126 Members.

White population amounts by the Census of 1820, to			603,081
In a House of 126, each member will represent persons,			4,791
West of the Alleghany,	133,100	27—3,743	28
Between the Alleghany and Blue Ridge,	121,096	25—1,321	25
Between the Blue Ridge and Tide-water,	189,356	39—2,507	40
On Tide-water,	159,517	33—1,414	33
	603,069	124	126
Federal numbers amount to			895,003
Each member will represent persons,			7,031
West of the Alleghany,	142,147	20—1,527	20
Between the Alleghany and Blue Ridge,	142,083	20—1,463	20
Between the Blue Ridge and Tide-water,	330,025	46—6,599	47
On Tide-water,	280,619	39—6,410	39
	894,874	125	126

To divide the apportionment between white population and Federal numbers :

West of the Alleghany,	{ White,	23	
	{ Federal,	20	
		—	
		48	24
Between the Alleghany and Blue Ridge,	{ White,	25	
	{ Federal,	20	
		—	
		45	23
Between the Blue Ridge and Tide-water,	{ White,	40	
	{ Federal,	47	
		—	
		87	43
On Tide-water,	{ White,	33	
	{ Federal,	39	
		—	
		72	36
		—	
			126

The white population and Federal numbers added, and then divided, give 220,068
 If the country on tide-water be entitled to 36 members, then each member
 will represent, 6,113

	Whites.	Fed. Nos.	
The Henrico district contains,	21,885	40,395	
Its share of 36 members, is	4—3,001	5—4,240	9—7,241
			—
			4—8,620

Mr. Leigh explained the ground of the slight difference between his estimate and that of Mr. Marshall, arising from the latter's having referred to the Census of 1820, while Mr. L. endeavoured to approximate the true estimate of the present population. He had allowed two more to the Western district, being resolved to guard against the influence of his own partialities.

Mr. Nicholas would not commit himself by any pledge to vote for either of these plans till he had considered their practical effect on his own district : in matters of general principles he was a representative of the State at large—but in a plan of compromise he must look at home.

Mr. Randolph expressed his very high personal respect for the gentleman from Richmond, (Mr. Marshall,) who had given his views to the Convention. The very great weight, said Mr. R., which that gentleman has here, in the Commonwealth, and in the Union, makes me desirous that I may be under no misapprehension of his meaning. I rise to put myself right. If I understood him rightly, he describes the two extremes of the question to be, on one side the principle of naked numbers, and on the other, that of taxation taken alone. Between these two extremes he has found a medium—consisting of the Federal numbers. This he considers as a proper, middle ground of compromise. Now, I see nothing in a fair spirit of compromise in departing from this golden mean, and taking the white basis as one extreme and the Federal numbers as the other, to meet half-way. Let me illustrate my meaning. Two neighbours have a dispute, and the sum in controversy between them amounts to \$100 : Each rigorously insisting that that amount is due to him. They agree at length, (to use a phrase which has been already employed, and which though it be a vulgar one, exactly expresses the idea) to split the difference : \$50 is the half-way point. But, says one of the parties, let us now make a fair compromise : I will take the \$100 I claimed as one point, and this \$50 as the other, and then you shall pay me \$75. With all my heart, says the other, but with this difference : I will take nothing for the one point, and this \$50 for the other, and then I will pay you \$25. According to which extreme you go, on one side or other of the middle ground, you must pay 75 or 25 per cent. of your neighbour's demand. I cannot see the justice after we have fixed upon one golden mean, a "*medio tutissimus*," of leaving it for another middle ground, between this and the extreme of the stern inexorable demand of our adversaries. I thought it due to myself to state what gross injustice I consider, first to fix upon the Federal numbers—and then, after settling upon that as a ground of compromise, to make it only one of two extremes, taking the utmost claim of numbers for the other extreme and going into a new compromise between these two.

Mr. Powell considered the course which had been pursued as tending rather to retard than advance a compromise—it was calculated to distract and divide, and to draw

off the minds of gentlemen from the steady purpose they had cherished, when they offered the compromise stated by his friend from Frederick (Mr. Cooke.) All the principles in Mr. Leigh's proposition had been discussed and successively rejected. They had already conceded what they considered most important, by giving up the white basis in the Senate: he called upon his friends to stand firm to the ground they had taken, and not have their minds distracted by these various schemes.

Mr. Mercer moved that the House go into Committee of the Whole, but withdrew the motion at the request of

Mr. Johnson, who expressed his lively satisfaction at seeing the gravest and most experienced members coming forward, with endeavours to bring this vexed question to an amicable issue: he did not now despair of success. He preferred having a principle laid down, for all future time, to leaving the ratio of Representation within the reach of Legislative enactment. He disclaimed any thing like a pledge to vote for the compromise of Mr. Cooke—but held himself at liberty to embrace any other which he should consider preferable in its results. He concluded by moving the reference of the various projects to a Select Committee of seven.

Mr. Leigh opposed the motion—According as the majority in the Select Committee should be on one side or the other, so would be the report, and all would have to be gone over again. He had himself been willing to concede—but the gentleman from Frederick met that spirit, by calling on his friends to “stand firm.”

Mr. Powell disclaimed having spoken of any pledge. He had called on the friends of the compromise offered by the West, to stand firm, and not permit their minds to be distracted by various propositions from that which they had agreed to offer.

Mr. Leigh still referring to the import of “standing firm,”

Mr. Powell said, he meant to call on them to stand firm, unless in their conscience they believed some one of the other schemes to be better.

Mr. Doddridge enquired, what was the question?

The President replied—Explained why he had given some latitude to the previous conversation, and stated the question to be on Mr. Johnson's motion for a Select Committee.

Mr. Leigh again referring to Mr. Powell's call, said, if those gentlemen were resolved to “stand firm,” he trusted in God they (himself and friends) could stand as firm on the ground of liberty, truth and justice they had taken. The moment gentlemen should shew themselves ready to meet and offer for compromise, he was prepared to meet them—but he would not travel one inch if they were to “stand firm.” He opposed the plan of a Select Committee.

Mr. Stanard agreed in considering Mr. Johnson's motion as likely to issue in nothing; but was willing to give it a trial. He again adverted to the different results obtained by referring to tax-payers, qualified voters, and all persons over twenty-one. If the tax-payers on the Commissioners' books should be taken as a basis, the result would be nearly the same as by adopting the ratio of Federal numbers. He insisted on the advantages of adopting this basis, as giving a permanent and fair rule of Representation.

Mr. Doddridge in explanation to Mr. Stanard, disclaimed any opinion on the part of his friends, that Representation was to be based on voters alone: none of them held it but Mr. Johnson. He opposed the plan of a Select Committee, as only going to clothe the opinions of the majority, which ever side it should be, in the best manner to be sent to the public.

Mr. Randolph said, that he rose to express a hope that the motion of the gentleman from Augusta, would not prevail. He was not surprised that it should have been made. If he recollected right, this was the direction which that gentleman would have given to the proceedings of the Convention *ab initio*: it was therefore not surprising that he should look with favour on such a plan. Though I, said Mr. R. am not one of the protestors, I must be permitted to deny the right, (I speak of course of the Parliamentary right,) of any gentleman on this floor—on behalf of himself and his friends—I was about to use a hard word, but I mean it in no offensive sense—to *arrogate* to themselves the description of a majority, in great clemency and condescension, holding out concessions to a minority, as a prince would hold out an offer of amnesty to his revolted subjects. There is nothing to justify any gentleman here in assuming such a tone. If there be, why was not the famous white basis of their's long ago adopted by the Convention? But if there were a decided and fixed majority in favor of such a proposition—I speak for myself and as no man's proxy—I will accept no Constitution, that has the monstrous, the tyrannous, the preposterous, and abominable principle, that *numbers* alone are to be regarded as a fit basis of Representation in the House of Delegates. You may compromise till the Day of Judgment: you may offer us any plan you will: give us any form of the Senate you like, with a Governor elected by that Senate: while this principle is retained, I will reject the whole—I nail my colours to the mast. I will go down: but I will never surrender to the principle of mere white population as a basis for the lower House. It never can be endured. It leads

to a despotism, and a state of vassalage, to which I never will submit—and to which I am very sure that the great body of the freeholders of Virginia, on this side the mountain, never will submit. Gild the pill as you will, they never can be made to swallow this poison. There cannot be any Select Committee which will justly represent the feelings of the whole of this body. I apprehend the plan is to bring forward some project very disagreeable to all parties, under the sanction and authority of weighty names. No Select Committee can be chosen, that will have my confidence. I will make no man my proxy, to speak for me.

Mr. Mercer rose to express his thanks to his venerable friend before him (Mr. Marshall) for the determination he had expressed, that if there should be a majority in favor of the scheme proposed by his friend from Frederick, he would yield his assent to it, though it might not be that which he would prefer. It would be recollected that that scheme proposed the white basis in one House, and the basis of Federal numbers in the other. Mr. M. opposed at some length the plan of a Select Committee—the duty proposed to be assigned to them was one of the last that should be given to a committee of that description.

The question was then taken on the motion of Mr. Johnson, and decided in the negative.

On motion of Mr. Nicholas, the statement submitted by Mr. Marshall was referred to the Committee of the Whole, and ordered to be printed.

Mr. Cooke now moved an adjournment, but withdrew the motion at the request of Mr. Leigh, with a view to taking up some other subject.

On motion of Mr. Nicholas, a Committee of three members was appointed to enquire into some other place of meeting for the Convention (on account of the approaching session of the Legislature.)

Messrs. Nicholas, Johnson and Leigh, were appointed to constitute such Committee.

Mr. Wilson gave notice, that on some day of this week he should move that this Convention adjourn to meet again on the first Monday in October, 1830.

On motion of Mr. Mercer, the House then went into Committee of the Whole, Mr. Stanard in the Chair, and took up the report of the *Judiciary Committee*. And the question being on the first resolution of that report, which reads as follows:

“*Resolved*, That the Judicial power shall be vested in a Court of Appeals, in such Inferior Courts, as the Legislature shall from time to time ordain and establish, and in the County Courts. The jurisdiction of these tribunals shall be regulated by law. The Judges of the Court of Appeals and of the Inferior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution: and shall, at the same time, hold no other office, appointment or public trust: and the acceptance thereof, by either of them, shall vacate his Judicial office. No modification or abolition of any court, shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any Judicial duties which the Legislature shall assign him.”

Mr. Bayly moved to amend the resolution by striking out the words “and in the County Courts.”

MR. BAYLY said: My motion, if agreed to, will not destroy the County Court system; all it demands is to place them with the other Inferior Courts of this Commonwealth, subject to the control and organization of the General Assembly; that the power may be given to the people, by their representatives, to change them whenever, from their incapacity, they become unfit to administer justice, or to abolish them whenever they become corrupt, and are unworthy to be trusted with any authority. If my proposition shall prevail, it will make the Court of Appeals the only Supreme and Constitutional Court, and leave all other courts subject to legislation as circumstances and the good of the Commonwealth may require: it will not destroy these courts, but place them by the side of the Superior Courts of Chancery and Common Law: and all will remain as now organized, until the people experience the necessity of a reformation, and therefore it is proper that the Legislature should have the power of protecting them, if worthy of protection, or of destroying them, if they deserve such a fate. I do not understand why courts of higher grade, and the Judges of these courts, which it is the wish of gentlemen should be so perfectly independent, should be put in the power of the General Assembly to abolish or reform, and the County Courts, so inferior in every requisite qualification to exalt a tribunal of justice, shall be held too sacred ever to be changed.

Much has been said in debate, in commendation of these courts before we have reached the report of the Committee which relates to the Judiciary Department. In my judgment, it would have been better if all that has heretofore been urged in their favour, had been reserved for its proper place in the order of discussion.

I am aware that by some, these courts are deemed highly desirable, and in some parts of the State the people approve the system; but there are other sections of the country that entertain very opposite opinions, and therefore I do not urge their destruction now. All I ask, is to let them hereafter be judged according to their good or evil deeds. And if they are so popular as their friends represent them to be, no

doubt the Legislature, speaking the will of the people, will preserve the system. When these courts were first established, they were clothed with the high power they now possess, and nothing but the then necessity of the times, situation, and circumstances of the country would have justified so great a departure from republican principles as to unite in the same body of men, Legislative, Executive, and Judicial authority. These men, appointed by themselves, a self-constituted tribunal, which appoint all civil officers of the county, high and low; all militia officers under the grade of Brigadier General; they, lay all the taxes for county purposes, which is more in some counties than the State tax. The county and State taxes are collected by the sheriff, who is appointed by the justices of the court, and is one of them when they make the appointment, and will return to the bench after his term of two years of sheriffalty ends; for, he will be surely recommended. A sheriff thus appointed considers himself perfectly secure from all punishment, however guilty, if charged before this court. I will not say that a court thus appointed, and possessing the power and authority they do, is aristocratic, lest some gentlemen may consider it pure republican. To me, however, it appears to be in opposition to those great principles of free Government which declare that the Legislative and Executive powers should be separate and distinct from the Judiciary, and that a freeman ought not to be taxed without his consent, expressed by himself or his representative. In 1776, when the Constitution was formed, the people were looking more at a state of war than peace, and the County Courts were in effect committees of public safety: there was a necessity for giving the justices of the county high and responsible powers; they consisted of the most distinguished men, and their influence aided greatly in the revolutionary cause. At that time it was politic, and I am persuaded it was the best Constitution that could then be formed; it was fitted to the times; it did its full part in establishing the independence of the country, and it worked well for twenty years afterwards; it was then in its youth, virtuous and respected: now the times are changed, the system is worn out; the people understand more of the principles of free Government, feel their power, and know their rights, and will exercise them. You must change the mode of appointing the justices, or their courts will not be worthy of the confidence of the people.

The gentleman from Chesterfield, (Mr. Leigh,) introduced the subject of the County Courts, and their powers, to aid his argument in opposing the election of the sheriff by the people. He said, that the court, thus organized, had never done any injury, and that the appointment of sheriff ought to continue in their hands, to compensate themselves for their services.

When this Committee refused to concur in the resolution of the Select Committee, providing that the election of the sheriffs should be by the people, it was not thereby decided that they should be appointed as heretofore. For, should no constitutional provision be made, prescribing the manner of the appointments, it would be left to the General Assembly, to be regulated by law; and I do not entertain a doubt, but that public opinion, which is so powerful in this country, would in two or three years, compel the Legislature to give that appointment to the people, by election; and they would make a better selection of a man capable and honest, to fill that office, than by the mode now pursued: at all events, the people would so consider it, and be better satisfied with the man of their choice.

We are informed by the same gentleman, that the justices are not compelled to appoint the sheriff from one of themselves. Sir, I know that they can recommend any man not belonging to their bench, and it is no compliment to them to say, that although they are not by the law, or the Constitution, compelled to appoint one of their brethren, yet they always take care to do it, and their practice has made it law in effect. The justices of the peace not only give the sheriffalty to themselves, in rotation, but every other office of honor or trust in their counties, they either fill from the bench, or bestow on some family connexion. In some parts of the State, even the petty office of the commissioner of the revenue is passed from one justice to another, for the emoluments it affords, and they annually make the appointment, to give every justice his rotation in that office. In other counties, a justice of the peace having great influence in the court, is commissioner for life; however unfit he may be to discharge the duties, he considers himself perfectly secure, and thus he is at the same time a justice of the peace, a justice of the County Court, exercising great judicial powers, and a commissioner of the revenue, appointed by the same court, and exercising ministerial and executive duties; and in all this the people are not consulted, for they have no voice in the appointment of this man, who has a power of great magnitude over them. In practice, the justices of the peace in court and out of court, monopolize to themselves all the offices in the county that are worth possessing.

The gentleman from Amelia, (Mr. Giles,) has said that the County Court system operates to throw all the power of the county into the middle class of the community. What that gentleman means by the middle class of the community, he has not explained. Perhaps what he considers the middle class, I may consider the best class;

but I have yet to learn that those who compose these courts, are either the middle or the best part of the people. Constituted as they now are, with an unlimited jurisdiction in all cases of law and equity, they certainly are not fit for that duty in a very large portion of the State; though it may be otherwise in some few counties and cities, but in general they are very unfit to exercise chancery or common law jurisdiction. They are perfectly incompetent to decide long and complicated chancery causes, with voluminous documents and intricate accounts, which occupies a court two or three days; and it has happened, that there has not been on the bench a single justice when the decree was pronounced, that was there when the cause was opened: the case often happens in the trials of causes at common law, where the law is not very clear, and the subject in demand is of great value. Sir, you give them the authority to decree and render judgment in matters of great importance, but you cannot give them the ability to discharge these duties correctly.

The dockets of these courts heretofore, have been so neglected, they became so crowded with causes, that to enter a suit was a denial of justice; and they are not much better now. To remedy this evil, the General Assembly abolished the High Court of Chancery, and nine District Courts of Chancery have been created to make it convenient for the parties to leave the county and go into these courts. The District Courts of Common Law, which were the best that were ever established in Virginia, held by two Judges, and they every term exchanging circuits, with other Judges of the General Court, for the same reason were abolished, and a Superior Court of Common Law was created in each county to take the business from these incompetent tribunals, the County Courts. And you now have twelve terms of the County Court, and two terms of the Superior Court of Law, every year in each county, small and great. If, Sir, the County Court could be abolished, the Superior Court of Law would soon follow its fate. I rejoice, that I voted against the establishment of the Superior Court of Law, in 1808, but it passed the Senate ten to nine votes: a court composed of one Judge, and he confined to his circuit: this court, the offspring of the County Courts, is not a favourite of the people. Abolish both these Courts, for be assured both greatly aided in the call of this Convention, and place in their stead, tribunals of justice that will demand (which they will be certain to do if they merit it,) the affection and confidence of the people. I know, Sir, this court of one Judge is, by the report of the Committee, left subject to legislative controul, and it seems to be the expectation and wish of a majority of the Convention, that the first Legislature which shall assemble under the Constitution we are endeavouring to make, will reform these Superior Courts of Law of each county. Let this Convention not do their business by halves. You cannot effectually reform the County Superior Courts, without at the same time having under advisement the County Courts; they are very much united together. And let both be under the *guardianship* of the General Assembly.

Some gentlemen most highly approve of the County Court system, because they say justice is administered cheap, and the saving of expense to the people is great. I believe the people will not thank them for thus taking care of their expenses on this occasion, for, so far is this from being the case, that my experience convinces me that it is most expensive and most oppressive not only to suitors, but to all others having any business in these courts, and constituted as they now are, with all their multifarious duties and powers, every man is compelled occasionally to attend them upon business other than that of litigation. Thus it is, that those persons who must resort to them upon other than contested cases, have often to attend two or three days before they can get their business done; and the suitors are postponed from day to day, from court to court, for years before they can get a trial of their causes; the daily expenses, the loss of time to suitors and their witnesses, exclusive of costs of attorneys, sheriffs and clerk's fees, are more than the subject of controversy is often worth, and in fact, it is sometimes better for a man to give up a demand of one hundred dollars, however plain his demand may be, than to resort to those courts, mis-called courts of justice, administering the uncertainty of the law.

Mr. Marshall rose in opposition. The question now before the Committee is substantially the question, whether the County Courts shall continue to exist or not. Any objection to the details of the system is not sufficient, to induce us to strike out the clause which is the subject of the present motion. If the jurisdiction of these courts is considered as defective, let the system be so modified, as to make their jurisdiction more perfect. The matter is perfectly open, and will continue to be perfectly open, if this clause is permitted to stand. If the motion succeeds, either the County Courts must be abandoned, or the article modified. The article, as it stands, purports to enumerate all the courts, in which the judicial power of the Commonwealth is to be vested. County Courts form one of these depositories. If we expunge County Courts from this list, we shall virtually deny to them any part of the judicial power of the State: it follows, that no objection to the jurisdiction of those courts as at present exercised, ought to induce us to consent to the proposed amendment, unless it is our

purpose that County Courts shall not continue to constitute any part of our Judiciary system. The article, as it now stands, leaves the whole subject open to the Legislature. They may limit or abridge the jurisdiction of all the courts as they please. If the Legislature choose to give them all Chancery jurisdiction, or if they shall think fit, to limit their jurisdiction in common law cases to a specific sum, the Legislature can do so. The whole subject of jurisdiction is submitted, absolutely and without qualification, to the power of the Legislature. The only effect therefore of the amendment will be, to abolish the County Courts. Is the Committee prepared for this? I certainly am not. The County Courts may be for some causes, an ill organized tribunal. It may be, for instance, unfit for Chancery jurisdiction: but that is no reason why such courts should not exist. We must have a County Court of some kind: its abolition will affect our whole internal police. I am not in the habit of bestowing extravagant eulogies upon my countrymen. I would rather hear them pronounced by others: but it is a truth, that no State in the Union, has hitherto enjoyed more complete internal quiet than Virginia. There is no part of America, where less disquiet and less of ill-feeling between man and man is to be found than in this Commonwealth, and I believe most firmly that this state of things is mainly to be ascribed to the practical operation of our County Courts. The magistrates who compose those courts, consist in general of the best men in their respective counties. They act in the spirit of peace-makers, and allay, rather than excite the small disputes and differences which will sometimes arise among neighbours. It is certainly much owing to this, that so much harmony prevails amongst us. These courts must be preserved: if we part with them, can we be sure that we shall retain among our justices of the peace the same respectability and weight of character as are now to be found? I think not. But my main object in rising, was to remind the Committee that there was no need of striking out the clause, if all we seek is some change in the jurisdiction of the courts.

MR. JOYNES spoke in substance as follows:

Mr. Chairman,—In rising to support the motion of my colleague to strike out "*County Courts*," from the first paragraph of the first resolution reported by the Committee on the Judicial Department of the Government, I regret, that I am under the necessity of endeavouring to sustain an opinion, contrary to that which has just been expressed by the venerable gentleman from Richmond, (Chief Justice Marshall). The opinions of that gentleman are entitled to great weight not only in this Convention, but throughout the United States, on every subject on which his opinions are expressed; and, I am sure there is no man who feels more respect for those opinions than the humble individual who now addresses you. But in political matters I cannot feel such a high respect for the opinions of any man, however exalted by character or talents, as implicitly to adopt his opinions. I will attentively and respectfully listen to the arguments of those who differ from me, and I must then decide according to the honest dictates of my own judgment, humble as it may be, on a view of the whole ground.

The gentleman from Richmond has told the Committee, that if the motion to strike out *County Courts* from the first resolution reported by the Judicial Committee be sustained by the vote of the Convention, it will totally destroy the County Courts; but with all my respect for such high authority, I cannot so understand the effect of sustaining the motion of my colleague. The first paragraph of the first resolution reported by the Judicial Committee is in these words, "Resolved, that the Judicial power shall be vested in a Court of Appeals, in such inferior courts as the Legislature shall from time to time ordain and establish, *and in the County Courts.*" The motion is to strike out County Courts, and notwithstanding all my respect for the contrary opinion expressed by the Chief Justice, I cannot avoid the conclusion, that if the motion to strike out County Courts prevail, it will still be entirely *competent to the Legislature, if they think proper to do so*, to retain the County Courts precisely as they are now organized, and to confer upon them precisely the same powers now conferred upon them by law. If the report of the Judicial Committee be adopted, the existence of the County Courts *as now organized*, will, forever, be placed entirely beyond the reach of legislation; whereas, if they be stricken out of the report, they will not be thereby abolished, but will be subjected to the power of the Legislature, who may continue them or not, or change their organization as past or future experience may render necessary.

In supporting the motion to strike out County Courts from the report of the Committee, I am not actuated by any wish to destroy those courts; very far from it; I think it would be unwise either to *destroy or retain* them by Constitutional sanction; but my wish is to subject them, and all the other Judicial tribunals of the Commonwealth, to the unlimited control of the Legislative power, which may from time to time *establish, modify, or abolish* them, as experience may render advisable. Great inconvenience has been heretofore experienced in this Commonwealth under the old Constitution, from *Judges of the General Court* and *Judges in Chancery* being named in the Constitution; and which has been generally so construed as to prevent the Legislature from conferring Chancery powers on *Judges of the General Court*. It is my

wish to leave the Legislature uncontrolled power to act on the subject from time to time as the public good may require.

I have the authority of the gentleman from Richmond, himself, for saying, that the Constitution ought not to go too much into detail; but that only general principles should be established in the Constitution, and it should be left to the Legislature to act upon those principles and carry them out in organizing the Government under the Constitution. The Constitution of the United States declares, that "the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish," and under that Constitution it has been found necessary at different times to change the organization of the courts. I wish to give similar powers to the Legislature over the courts of Virginia; and my objection to the report of the Judicial Committee is, that the County Courts, *as at present organized*, are proposed to be retained in all future time and under all possible circumstances, whatever may be the opinion of the Legislature or of the people on the subject, founded upon the experience of past and future times. The County Courts *may be* necessary and proper tribunals now, and might hereafter be rendered unnecessary or improper, by a different organization of the courts of the Commonwealth, or by a change in the opinions of the people relative to those courts.

Under the present organization of the courts of the Commonwealth, we have Superior Courts of Chancery and Superior Courts of Law; and I imagine gentlemen will agree that those courts are as necessary as County Courts—and if it be necessary to retain County Courts in the Constitution, so as to render them independent of Legislative control, why not also retain Superior Courts of Chancery and Common Law by Constitutional sanction? I can see no reason to retain the one any more than the other in the Constitution. If it be safe to trust the Legislature with control over the one, it appears to me that they may be safely trusted with control over the other. If County Courts be stricken out of the resolution, will they *thereby* be abolished any more than Superior Courts of Law and Chancery, which are not enumerated in the resolution? By striking out County Courts from the resolution, they, as well as the other courts will stand precisely upon the same footing, and will be continued or abolished as in the wisdom of the Legislature may seem best; and if the County Courts possess the confidence of the people in the State generally, we may safely rely on their being continued by the Legislature; and if they have not that confidence, they ought not to be continued.

The report of the Judicial Committee proposes to leave the powers and jurisdiction of the different courts to be regulated by law—and if it be prudent to give to the Legislature unlimited control over the *organization* of all other courts, and over the *jurisdiction and powers* of the County Courts, as well as the other courts of the State, where can be the necessity of retaining the County Courts, *eo nomine* in the Constitution? As the resolution now stands, the County Courts are to be retained at all events, and yet the Legislature may take away all the powers and jurisdiction conferred upon them by law.

The gentleman from Richmond tells us, that he is not in the habit of bestowing encomiums on his countrymen, but that he will say, that he believes that no people in the United States enjoy more internal tranquillity and quiet than the people of Virginia, and that he believes that this is owing, in a very great degree, to the justices of the County Courts who are the great peace-makers of the country. I have no doubt, Sir, of the fact, that the internal peace and tranquillity of society depend more upon the justices of the peace, than upon all the other officers of the Commonwealth together—and I have as much confidence in the *justice and impartiality* of these courts, as any man in the Convention. My connexion with these courts has been intimate for twenty years past, and there are no tribunals in the State in whose *justice and integrity* I have more confidence. But, Mr. Chairman, I have equal confidence in the Superior Courts of Chancery and Law, and, I would as soon retain them as the County Courts by Constitutional sanction. If it be unwise to trust the County Courts to the power of the Legislature merely because we have confidence in those courts, the same reason will apply with equal force to the Superior Courts of Law and Chancery. If we cannot trust the Legislature, let us go on to designate by name, all the courts which shall be established in Virginia in all future time; and let us also fix and establish their several powers and jurisdictions. While, Mr. Chairman, I willingly and unhesitatingly bear testimony, with the venerable gentleman from Richmond, to the *integrity and impartiality* of the County Court magistrates, permit me to say, that I consider *their mode of appointment* as entirely opposed to the principles of our Government. In the second section of the Bill of Rights it is declared, "that all power is vested in and consequently derived from the people." Although this principle may be carried into practice as to all the other officers of the State, yet it is totally disregarded in the *mode of appointing* County Court magistrates. Instead of justices of the peace in Virginia deriving their powers *from the people*, they are totally *independent of the people* for their appointment to, or continuance in office. The justices appointed un

der the Regal Government before the Revolution, were continued in office, and they have continued to supply vacancies in their own body as completely independent of the *people of Virginia* as is the Autocrat of all the Russias. I know that many justices of the peace, themselves, consider their *mode of appointment* as highly objectionable, and they would willingly see a different mode adopted for the future.

I am aware of the *difficulty* and perhaps *impossibility* of suggesting any mode of appointing justices of the peace *different from the mode prescribed in the Old Constitution*, which would be acceptable to a majority of *this Convention*—and, *perhaps*, it would be best to leave that matter entirely to the Legislature; and if any mode of appointment were adopted by the Legislature which was found not to answer well in practice, the present method could be restored, or such other adopted as the wisdom of the Legislature might suggest: whereas, a mode of appointment prescribed in the Constitution could not be altered by Legislative enactment. The mode of appointing Sheriffs seems to be so nearly connected with the County Court system, that if one be referred to Legislative control, it would, *probably*, be best to refer the other to the same power. If justices of the peace are to be *appointed and compensated* as at present, as a matter of course, the appointment of Sheriffs must devolve on them; but if a different mode of appointing *and compensating* justices of the peace be adopted either in the Constitution or by law, then the Sheriffs ought to be elected by the people; and it would, *probably*, be best, *under existing circumstances*, to confide the whole matter to the Legislature, who might from time to time change any regulations which might be adopted as experience might prove to be necessary on both subjects.

Mr. P. P. Barbour rose, not to enter into an argument, but to add a word of testimony as to the practical effects of the County Court system. I have practised in these courts for a quarter of a century, and I can say with the utmost truth, that my confidence in them has grown with my growth, and strengthened with my strength. After a twenty-five years' acquaintance with the County Courts of Virginia, it is my conscientious opinion that there is not, and never has been a tribunal under the Sun, where more substantial practical justice is administered. I am for giving them a Constitutional foothold in the Commonwealth, above the control of the Legislature: for myself, I would sooner part with any other department of the Government: I look to our County Courts as *tabula in naufragio*. The gentleman from Richmond asks, whether we can expect that our justices will have the same respectability and weight of character, if these courts shall be abolished? I answer promptly in the negative. As long as the County Courts continue to exist, not only our most intelligent and respectable citizens will go upon the bench, but those courts will bring before them such varied discussions of law points, as will materially contribute towards enabling them the better to discharge the duties of their station; and these discussions are connected with those courts mainly by the respectability of the Judges and the extent of their jurisdiction. The idea was suggested to me fifteen years ago by one of the most distinguished men we ever had among us; who declared it to me as his own belief, that the County Courts of Virginia exerted an important political influence upon her population. The monthly meeting of neighbours and of professional men, caused the people to mingle and associate more than they otherwise would do, and produced a discussion of topics of public interest in regard to the administration of Government, and the politics of the community. These meetings perpetually recurring in all the counties of the State, constitute so many points from which political information was thus diffused among the people, and their interest increased in public affairs. Mr. B. concluded by observing that he had not risen to argue, but merely to bear his testimony to the importance and value of the County Courts, and to express his hope that they would be permitted to continue.

Mr. Bayly said, he was well aware that any observations which he should offer would be of no avail against the name and influence of the venerable and worthy gentleman from Richmond, (Chief Justice Marshall,) or the learned gentleman from Orange, (Mr. P. P. Barbour.) But he would refer, as authority, to the opinion of a man, as great as either of these gentlemen, who held a very different sentiment upon this subject, and was directly in opposition to them: their opponent was Mr. Jefferson. The gentleman from Richmond had not mixed as much in society with the citizens from different parts of the State, as Mr. Jefferson had done. He had spent the greater part of his life in Richmond and in other cities; and his attention had, during that time, been drawn to higher and more important concerns than the business of County Courts. Mr. Bayly said, he had very great confidence in the opinions of the gentleman upon every subject where he had the opportunity, by experience, to command the facts on which he founded them. But Mr. Jefferson had been a personal witness to the operation of the County Court system; he was a justice of the peace for the county where he resided, remote from the cities or places for holding the higher Courts of the State; he knew and had experienced the bad effects of the County Court system. In the fourth volume of his writings, published since his death, is a letter to Samuel Kerchival, dated Monticello, July 12, 1816.

A part of which I will read :

"The justices of the Inferior Courts are self-chosen, are for life, and perpetuate their own body in succession forever, so that a faction once possessing themselves of the bench of a county, can never be broken up, but hold their county in chains, forever indissoluble. Yet these justices are the real Executive as well as Judiciary, in all our minor and most ordinary concerns. They tax us at will ; fill the office of sheriff, the most important of all the Executive officers of the county ; name nearly all our military leaders, which leaders, once named, are removable but by themselves. The juries, our judges of all fact, and of law when they choose it, are not selected by the people, nor amenable to them. They are chosen by an officer named by the court and Executive. Chosen, did I say ? Picked up by the sheriff from the loungings of the court yard, after every thing respectable has retired from it. Where then is our republicanism to be found ? Not in our Constitution certainly, but merely in the spirit of our people. That would oblige even a despot to govern us republicably. Owing to this spirit, and to nothing in the form of our Constitution, all things have gone well. But this fact, so triumphantly misquoted by the enemies of reformation, is not the fruit of our Constitution, but has prevailed in spite of it. Our functionaries have done well, because generally honest men. If any were not so, they feared to shew it.

"But it will be said, it is easier to find faults than to amend them. I do not think their amendment so difficult as is pretended. Only lay down true principles, and adhere to them inflexibly. Do not be frightened into their surrender by the alarms of the timid, or the croakings of wealth against the ascendancy of the people.

"The organization of our county administrations may be thought more difficult. But follow principle, and the knot unties itself. Divide the counties into wards of such size as that every citizen can attend when called on, and act in person. Ascribe to them the government of their wards in all things relating to themselves exclusively. A justice, chosen by themselves, in each, a constable, a military company, a patrol, a school, the care of their own poor, their own portion of the public roads, the choice of one or more jurors to serve in some court, and the delivery, within their own wards, of their own votes for all elective officers of higher sphere, will relieve the county administration of nearly all its business, will have it better done, and by making every citizen an acting member of the Government, and in the offices nearest and most interesting to him, will attach him by his strongest feelings to the independence of his country, and its republican Constitution. The justices thus chosen by every ward, would constitute the County Court, would do its judiciary business, direct roads and bridges, levy county and poor rates, and administer all the matters of common interest to the whole county. These wards, called townships in New England, are the vital principle of their Governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation. We should thus marshal our Government into, first, the general Federal Republic, for all concerns foreign and Federal ; second, that of the State, for what relates to our own citizens exclusively ; third, the county republics, for the duties and concerns of the county ; and fourth, the ward republics, for the small, and yet numerous and interesting concerns of the neighbourhood : and in Government, as well as in every other business of life, it is by division and subdivision of duties alone, that all matters, great and small, can be managed to perfection. And the whole is cemented by giving to every citizen, personally, a part in the administration of the public affairs.

"The sum of these amendments is, first, General Suffrage. Second, Equal representation in the Legislature. Third, An Executive chosen by the people. Fourth, Judges elective or amovable. Fifth, Justices, jurors and sheriffs elective. Sixth, Ward divisions. And seventh, Periodical amendments of the Constitution."

In the same book is a letter to Col. John Taylor, a justice of the peace for the county of Caroline, dated July 21, 1816.

I will read a part :

"Nor, I believe, do we differ as to the County Courts. I acknowledge the value of this institution ; that it is in truth our principal executive and judiciary, and that it does much for little *pecuniary* reward. It is their self-appointment I wish to correct ; to find some means of breaking up a cabal, when such a one gets possession of the bench. When this takes place, it becomes the most afflicting of tyrannies, because its powers are so various, and exercised on every thing most immediately around us. And how many instances have you and I known of these monopolies of county administration ! I knew a county in which a particular family (a numerous one) got possession of the bench, and for a whole generation never admitted a man on it who was not of its clan or connexion. I know a county now of one thousand and five hundred militia, of which sixty are federalists. Its court is of thirty members, of whom twenty are federalists, (every third man of the sect.) There are large and populous districts in it, without a justice, because without a federalist for appoint-

ment: the militia are as disproportionably under Federal officers. And there is no authority on earth which can break up this junto, short of a general Convention. The remaining one thousand four hundred and forty, free, fighting and paying citizens, are governed by men neither of their choice nor confidence, and without a hope of relief. They are certainly excluded from the blessings of a free Government for life, and indefinitely, for aught the Constitution has provided. This solecism may be called any thing but republican, and ought undoubtedly to be corrected."

These letters were written about the time of the first meeting of Delegates at Staunton, to promote the calling of a Convention to reform the Constitution, and no doubt had its influence on the State, in effecting and promoting the meeting of this Assembly.

Mr. Bayly said, that it would seem that this patriotic man directed his attention and scrutiny into every corner of Virginia, to consider and discover defects in the Constitution requiring amendments that would render the condition of the people more prosperous and happy.

What is it that I propose? To abolish the County Courts? No: All I desire at this time, is, that they may be placed under Legislative restraint and organization. If the Legislature shall say that the County Courts shall remain precisely as they are for the next half century, they will have the authority; but if at any period to come, the bench of these courts shall be found to be in a different situation from what at present their friends wish us to believe, let the Legislature of your country have the power to regulate and controul them, so as to remedy any evils which may arise or which have arisen. Give them power to break up this monopoly of office among family connexions, and to put an end to the intrigues by which it has been effected.

Mr. Giles said, that he did not rise to make a speech, (the season for speech-making was now past,) but only to remind gentlemen of one thing which they seemed to have forgot. The County Court system formed a part of the Constitution, as it now existed. What was it now proposed to do? To amend the Constitution by striking out a feature which it now contains: and what would be the effect of such an operation? Gentlemen say the effect will be not to destroy the County Courts. But certainly it will be giving a very broad hint to the Legislature that they shall destroy them, yet gentlemen say, oh no, that they do not wish to destroy the County Courts. One gentleman has furnished us with a variety of arguments on the subject; but I ask this Committee whether every argument he used, does not in fact go to the abolition of these courts. If his arguments are well founded, the courts ought to be abolished. The gentleman has introduced the opinions of Mr. Jefferson. I respect Mr. Jefferson's opinions very highly, but I confess I was not a little astonished to see the quarter from which the opinions of that gentleman are now urged upon this Assembly. Sir, it is something anomalous that this should come from gentlemen who tell us that they have no respect, and never had, for his political opinions.

Here Mr. Bayly interposed. I do not know whether the gentleman means me, but I shall ask him whether he does.

Mr. Giles resumed. I had no special reference to that gentleman, yet, as I understand that he disagrees with Mr. Jefferson generally, I include him with others. We are told that Mr. Jefferson made a great discovery, viz: that this is not a Republican Government. Mr. Jefferson was certainly a highly respectable man, but as we all know, he dealt very much in theories. He allows that the spirit of the people is republican in a high degree, yet the people have sustained this Government: and whence I ask is this republican spirit of the people derived? I say, they have derived it from their Government; and more especially to that feature of it which relates to the County Courts. Going extensively into theories, sometimes deprives us of a knowledge of facts: but acknowledge that the County Courts are of great importance. The gentleman from Accomac moves to strike them out of the Constitution, and in the next breath he tells us, that he does not wish to see them abolished. To say the least, he puts their existence at imminent hazard. He will not destroy the courts; but he will leave them almost to the winds, and will himself give them a pretty good breeze to begin with. Yet they are parts of our political system now, and the reasons for which he asks us to strike them out of the Constitution are such as go to justify their entire abolition.

Sir, I believe that our Government is Republican, though it does not draw that exact line of separation between the departments which is held by some to be essential to republicanism. Sir, it is impossible in practice to do this, and I look upon the doctrines which have been advanced by some, on that subject, as beautiful visions, but as visions only. There never yet was a Government, where the Legislative, Executive and Judicial Departments were kept perfectly and absolutely distinct: Some have maintained, that in the Government of the United States this end has been effected, but there never was a greater mistake. The Federal Government is a complete mixture, a perfect *Omnium Gatherum*. The Executive is a unit, but he has the controul of every law, provided he can get one more vote than one-third of both

Houses. And what is the Senate? It is a co-ordinate branch of the Legislative Department in all but money bills, and in yet in another aspect of it, the Senate is an essential part of the Executive Department. It has a check upon all the nominations of the President, and its consent is essential to the validity of all treaties; while in yet another view of it, that same body is a Judicial tribunal in the highest resort. It has to decide on the impeachment of the greatest officers in the States. I did myself sit as a Judge in that body. To insist then, on the utter separation of the different departments is to follow an *ignis fatuus*, to run after visions, while we have experience for a guide, which is the best test of wisdom. Can this proceed from any thing but the love of change? A determination to take whatever we can pick up, and if it does not answer, to strike it down and substitute something else? What can be the effect of such a course but to produce public agitation? To destroy that quiet which has been the peculiar blessing of Virginia? The State, as we all believe, has some celebrity: there is such a thing known in the United States as the Virginia character. Whence has it been derived? From our Government; from the happy operation of those fundamental laws under which we have lived and prospered for fifty-four years. Should we continue for fifty-four years more under the same state of things, we shall become yet more distinguished than we now are: but once strike down these bulwarks of the public peace and happiness, and nothing will ever be heard again of the Virginia character. Rely upon it, that character goes with your Government. It will not exist a moment after that shall have been prostrated. Your fate is inevitable, the causes which urge it on are irresistible. Once commence this downward course and you will infallibly go on, till every vestige of your former greatness shall be forever effaced. There is nothing in this Virginia character but a regard to morality, public and private. This it is that has won you the respect you enjoy. It is this which makes men who are bargaining and trafficking in Congress, say to each other, It is no use to go to him: he is a Virginian. Sir, the proposition before you hazards much, and we shall not be acting with coolness and deliberation, if we consent even to put at hazard political blessings so great as those we now enjoy. Let us not be persuaded to do this, by gentlemen who cry up a system to the skies, and then propose a measure which insures its destruction.

Mr. Bayly rose in reply to Mr. Giles, and said, I never believed that either a young or an old man ought to follow the opinions of others, unless he approved of them, and I did not suppose that, *that gentleman*, (Mr. Giles) ought to object to any member of this Committee introducing Mr. Jefferson as authority to support a motion upon a subject where he had expressed an opinion directly in point. Nor did I believe it was absolutely necessary for a man to agree in every sentiment, opinion or measure of policy of an author, before he should be *allowed* to refer to them in debate, as worthy of consideration. If, however, this new rule should be binding upon all, I might point to a gentleman who would be deprived of the right to use as authority the writings of any American statesman, because he never agreed with any. The time has been, and not long since, when not only the opinions, but even the wishes of Mr. Jefferson seemed almost to control the public sentiment of this country, and they yet have great respect in a Virginia Assembly.

It was not my intention to have read to the Committee any part of this book, (Mr. Jefferson's works,) but when the Chairman of the Judiciary Committee, (the Chief Justice of the United States,) so powerful in debate, opposed the motion, and finding myself in opposition to him, who as a lawyer and Judge, is without a rival, it was my *duty* to balance the great weight of his argument, by introducing the authority of Mr. Jefferson, whose opinions precisely meet the argument of the gentleman from Richmond. I *ought* to have drawn to my aid so great and influential an assistant in support of the motion. To this, the gentleman from Amelia has such strong objections, because he says, that I have not uniformly been an admirer of Mr. Jefferson's opinions. Mr. Chairman, although I have never been in the habit of continually promulgating my political creed and schemes by *pushing* them upon the people by newspaper essays, pamphlets and books, lest they should suspect that I had no political fixed creed, that did not change with the times; yet I have for thirty years, obtained the approbation and support of my constituents, who are of all parties, because my sentiments of public men and measures, have never been *concealed*, and therefore, there was no necessity of keeping alive party *names* for party purposes and for private interest, by such means. I always distinguish between men, measures and principles, and if the gentleman ever heard me disparage Mr. Jefferson's writings, he has heard what never happened. And if he or any other gentleman ever imagined that they heard me speak of that man in any manner, or on any occasion, but with the greatest respect, they have heard what never took place. From early youth to the present day, his writings have been my favourite reading. It is true that I did disapprove of the repeal of the Judiciary Law, which he greatly promoted, because I believed it was a good system and ought to have been further tried; and no better system has yet been substituted. And where is the man living on the Eastern Shore, who was not grieved by the almost

fatal blow that was given to the navy and commerce of the country during his administration : that man is not to be found. But for the purchase of Louisiana, and many others of his acts, I was numbered among his friends, which the Journal of the Senate of Virginia from 1801 to 1809 will show. I belong to that class of politicians, who stand by their country in times of war and great danger. The gentleman from Amelia may know, that in the gloomy period of the last war, when it was necessary for every man to stand by the Government, that I was not found united to a faction of open enemies or pretended friends to the Administration, to destroy it and degrade the country. I united my cheerful support to those in power, to bring that war to a happy conclusion, and I stood by my post until that was accomplished.

Mr. Giles observed in reply, that he had not supposed that any thing he had said would call out so much animation on the part of the gentleman. When speaking of his introduction of the opinions of Mr. Jefferson, he really did not know that the gentleman agreed with Mr. Jefferson's political sentiments; he had always understood that when the politicians of the country were divided into Federalists and Republicans, the gentleman had always ranked as a Federalist, and Mr. Jefferson as a Republican.

Mr. Bayly said, that the gentleman from Amelia was peculiarly fortunate in residing in a county where the court is so highly qualified for the discharge of their duty, and we may imagine it is the most distinguished in Virginia. The reason is obvious : that gentleman has placed himself at the head of the schools in that county, which has educated the justices, and rendered them so accomplished. Not so in my part of the country; we have had no eminent *statesman* as yet, who has taken upon himself the education of boys.

When the gentleman made his long speech on the basis of Representation, he introduced, as *applicable* to his subject, the County Court system. I am very sure I am not mistaken in the fact, for he told us, by way of proving the excellence of these courts, that a rich man could with difficulty get justice against a poor man. And if they do not administer justice equally between rich and poor, how is it that they are such favorites with the rich? But there are other parts of the State where the opposite seems to be the case; however, it is not probable that they will long be a favorite in Virginia. There are more counties than Dinwiddie, which has been quoted as an example by the gentleman from Chesterfield, (Mr. Leigh,) where the magistracy of the county is in the possession of one or two families only.

The gentleman from Amelia assimilated the County Courts to the Senate of the United States, having Legislative, Executive, and Judicial power. He always finds his subject carry him in some way to the Constitution of the United States, the Administration, or some department thereof, and has informed this Committee that he has sat as a Judge in that Senate. I thank him for this example of illustrating his argument. Does Virginia wish that her Senators in Congress, with their Executive, Legislative, and Judicial powers, should be appointed by themselves, and remain in office during life, as County Court justices are appointed and remain in office? Not so : Virginia has lamented the election of some of her Senators before their short term of six years expired, which no man better knows than the Delegate from Amelia.

The gentleman has informed us, that if the freeholders of the State had all voted for or against the call of this Convention, and the polls had been correctly taken and returned by the Sheriffs, there would not have been a majority in favor of it; and that he had great doubts when he signed his proclamation, whether a majority was in favor of the measure, and that he still has great doubts now. If we examine his communication to the last General Assembly, it would seem to me that he entertained a different opinion at that time.

We have also heard from the same gentleman, that a majority of the freeholders would be against the call of the Convention, if they had to vote now for or against it : and changes in public opinion have taken place since we assembled. So far as my experience goes, and from all parts of the State that I have heard from, there has been a great change, but that change is against the old Constitution, with *one exception*, and perhaps that exception influenced the opinion of the gentleman, for the county is not far from Richmond.

A gentleman of great authority informed me a few days ago, that there were *great* changes in the county in which he resided, and that if the vote was now to be taken, the majority against a Convention would be greater than it was in the Spring. I have examined the return of the votes from that county, as communicated to the last General Assembly by the Governor, and I find that in May last *only one* man voted in that county for a Convention.

Mr. Giles rejoined : and expressed his regret that the gentleman appeared so sensitive under the remarks which he had thrown out. He had served with that gentleman in Congress, and sure he was, that the gentleman at that time had always been ranked as one of the Federal Party. He was happy at this late period to hear from the gentleman a new profession. It was wholly new to him, but he was joyful to hear it

even though it was so late. Mr. G. disclaimed having ever said, that there were counties in the State in which a rich man could not get justice. What he had said on that subject was intended not as a disparagement, but rather as a compliment to the justices. So guarded were they against leaning to the side of the rich to the injury of the poor, that their leaning, if they had any, was rather to the other side, so that the possession of riches was, if any thing, rather a disadvantage than otherwise to a suitor who sought to oppress his poor neighbour. This he conceived to be one of the highest eulogiums which could be pronounced upon any judicial tribunal.

Mr. Johnson said, that he could not permit the vote to be taken, without adding his testimony to that of the gentleman from Orange, in favour of these ancient tribunals of the land. When I was very young, said Mr. J. and but little experienced in the duties of my profession, I had, I confess, some misgivings about our County Courts. My perceptions enabled me to see those objections to them which lie upon the surface, and to which none can be blind; but, I had not appreciated the blessings which daily flow to the community from this institution: blessings the most important and extensive; which, because they operate silently, are not so apt to be observed by a transient looker-on. The ill effects are obvious and seen by all, but it is of the nature of all well organized political institutions, that they dispense their benefits silently and without observation. It is, therefore, that we find the young and inexperienced so often arrayed against the most valuable parts of the Constitution. It was so with me: but I had not long looked beneath the surface and reflected on the effects actually produced by the County Court system, till I was perfectly satisfied of its value and importance to the well-being of our Commonwealth. Evils it no doubt has, but they are such as are inseparable from the imperfection of all human things. They might, many of them, be corrected by ordinary legislation: but in getting rid of some, it is very questionable, whether you might not substitute others of more pernicious consequences. I am well persuaded we could not surrender these institutions without losing one of the best blessings of the country. I concur with the gentleman from Orange, (Mr. Barbour,) and the gentleman from Amelia, (Mr. Giles,) in the opinions they have expressed, as to the influence of these courts on public sentiment, and the political opinions of the people, and of their effect upon the character of the State. Yes, Sir, it is in these family tribunals with their mild and patriarchal jurisdiction, their meetings held at short periods, and in small districts, that the obligations and rights of the citizen are taught to the humblest members of the community. Before these just and equitable tribunals, the humblest and the poorest man can have his right to property, to character, to liberty, and to life, brought into fair and equal competition with those of his proudest and most wealthy neighbour. This equal administration of the laws, tends to produce among the people a strong attachment to the country which thus protects their persons and their lives, and so sensible are they of the value of these institutions that they are firmly determined never to give them up.

Strike out this clause from the Constitution, and what is the consequence? Why, say the gentlemen, the consequence will be not to destroy the County Courts, but only to leave them to the control of the Legislature. The Legislature may re-organize them if they please. Sir, do gentlemen really think, that such will be the effect of striking out this clause? Other parts of our Constitution make it necessary that the County Courts should be Constitutional Courts, unless they also are to be surrendered to the Legislature. Not the least of the benefits attending these courts is derived from their participation in the Executive power of the Government, but how can this be maintained if you strike them out as a Constitutional provision? Are gentlemen prepared to leave it to the Legislature to mould the Executive powers of the Government? They must do so if this measure prevails; they must vest the whole of it in a single Executive, if they deprive the County Courts of all share in its participation. What will gentlemen do with the residuum of power which they take away from these courts? They recommend for appointment all justices and militia-officers. This must be given to the Executive, and this forsooth is proposed as a means to get rid of faction and cabals in the community. Will gentlemen look a moment at this subject? when they indulge their fears of this spectre of cabal and intrigue and commotion? From whence is it to proceed? from the County Courts? what are they? one hundred and four different bodies; one in each county. Can it be probable that one hundred and four collections of respectable men possessed of property and character, and having their all dependant on the good administration of the laws, will be likely to produce as much cabal and intrigue in the State, as might be expected to arise if the whole of this mass of power should be put into the hands of a single Executive? or of a Governor with an advisory Council? or even of a Governor with a Council of control? Gentlemen fear lest the County Courts in a single county should, in high party times, appoint two or three Federalists, with a view to influence the balance of parties in the State. But, what might be apprehended if the whole of this power should be in the hands of an Executive wholly Federal? or wholly Repub-

lican? Then instead of appointing two or three individuals of a particular party, from party considerations, we might have two or three thousands appointed from the same motives.

About what are these cabals and factions to arise? Gentlemen tell us, it will be for the purpose of keeping up family power, because these courts appoint the members of their own body; but do gentlemen remember that the office of a justice is not an office of profit, but an office of labour, of great labour? and do gentlemen remember the nature of the responsibility under which these justices act? not the responsibility of being turned out of office, not the responsibility which they owe to the Constitution, but that which each man owes to his immediate neighbours. They have a direct relation to all the country around them, and the moment a magistrate incurs by ill conduct the public displeasure, that moment he loses all the honour of his office, and all the peace and comfort of his life. This is the safeguard: the powerful and the constant security, which the Commonwealth holds, for the due discharge of the duties of the magisterial office; this is the pledge against the undue influence of any party of politicians or any sect of religionists. I have often heard the charge of partiality advanced, but I never yet knew it to be verified in one single instance. The responsibility to which I have alluded is found to be sufficient and effectual, and I am not willing for the sake of opening a field to Legislative ingenuity on a subject of such vital importance to the well-being of the Commonwealth, to strike the County Courts from our proposed Constitution.

Mr. Henderson said, that he had intended to enter fully into a reply, but he should not do so now. He differed from the gentleman who had spoken as to the necessity of retaining these tribunals, by giving them a Constitutional consecration. He saw no need whatever of making them a part of our organic law. If the arguments of gentlemen were good, and the statements which they had made correct, the Legislature could not fail to retain these courts. Could it be believed that the Assembly would be guilty of the wantonness of throwing such popular and such valuable tribunals to the winds? Mr. H. said, that in case he should find it likely to be of any avail, he should present some different views of the subject; at present, he should merely say, that it was his opinion that the County Courts ought not to be left in the fundamental laws of the State. Gentlemen had said, that they had observed these courts for a quarter of a century, and that they had constantly grown in their estimation: He also had practised before them, and was sorry that he could not in candour bear the same testimony in their behalf. The magistrates were in general worthy men, but they were not acquainted with law, and were not capable of duly discharging the duties that were required at their hands. However it might be in lower Virginia, where, according to gentlemen's statements, the magistrates were men of fortune and leisure, and took a pride in fitting themselves for their duty, in the remote parts of the State this was not the case. The population were in a very different condition: the magistrates were not so wealthy; they had business at home and could not afford to travel thirty, fifty, and one hundred miles, attend their courts and return again, on their own charges. When they did so, the court could not be induced to sit long enough to try the causes before them, and such were the impediments and the delays in obtaining justice, that though he was a professional man, he was in the habit of advising clients who applied to him, to pocket their loss, if it did not exceed fifty or sixty dollars, rather than encounter the difficulties and the hazard of going before these courts. He repeated his belief, that the magistrates were in general very worthy men. He felt high respect for those in his own portion of the State, yet he considered them for the most part unfit for the stations they held: and this without any fault of their own, or the least imputation against them. They were country gentlemen, very imperfectly acquainted with law, who had affairs of their own to attend to, and could not afford to neglect their own business for that of the public, without some compensation.

Mr. Leigh rose in reply. The gentleman from Loudoun had said, that he could see no reason why the Legislature might not be entrusted with the entire control of this subject; would the gentleman carry out his principle, and leave the whole Judicial Department of the Government to the management of the Legislature? Such was the direct consequence of the gentleman's doctrine. Sir, said Mr. L. it is with inefable surprise, that I learn that in the great and flourishing county of Loudoun, of which we have all heard so much and so long, persons are not to be found, who are fit to discharge the duties of a magistrate. If this had been affirmed of some very poor or very small county of the State, I should have less difficulty in comprehending the case, and in crediting the assertion; but how there should be such a difference in this respect, between the county of Loudoun and the county of Orange, I confess myself to be at a loss to comprehend. I never before heard any complaint of Loudoun, or any thing about its insufficiency to produce good magistrates. However this may be in Loudoun, it is certainly a fact that the County Courts accomplish nine-tenths of the Judicial business of this State. The mass of business they go through would hardly be believed by the magistrates themselves. Those unpretending men

can scarce form a conception of the importance of their own situation: they do not exercise a jurisdiction in common law and equity only, but perform all the duties of a Court of Probat, and of an Orphan's Court. It is calculated, that every estate in England passes the Court of Chancery once in thirty years; if such is the case in England, in Virginia where the law of descents is so different, the real estate must come under Chancery decision in a much shorter period; ninety-nine hundredths of the cases of guardians and executors and all those of trustees are of this description. All our estates are divided by descent or devise. Only compare the number of estates with the number of law-questions which come to be settled. Now in ninety-nine cases out of one hundred, the County Courts perform all this business. Of all the litigated questions of probat, what proportion ever reach the Court of Appeals? Nine hundred and ninety-nine out of a thousand of these questions are finally determined in the County Courts. Take the Circuit Court dockets and compare the number of causes there with the number in the County Courts, and you will find that the number in the latter is infinitely greater. [Mr. P. P. Barbour, as four to one. Mr. Morris, aye as ten to one.] Now, Sir, the County Courts do all this amount of business, and they do it well. A case may accidentally occur under their Chancery jurisdiction involving some difficult questions of law, and in these they may be somewhat at a loss; yet I remember one such case in Dinwiddie, which was very difficult indeed, where the decision of the County Court was carried up to the Superior Court and reversed; it was afterwards carried to the Court of Appeals, and after a full hearing, the judgment of the County Court was there found to have been right. The Judges of the Superior Court bewildered by their authorities had decided wrong, while these plain magistrates of the County Court had followed the exact spirit of the law, and had decided right. How did this happen? that a collection of country justices should decide on a very difficult question of law more correctly than men educated to the profession, and of long experience in the very business of deciding questions of that kind? It happened, because the one followed the principles of natural justice, while the other was perplexed and bewildered by a set of artificial rules: and hence it comes, that the eulogium pronounced by the learned gentleman from Orange is perfectly just, in declaring that these tribunals are not merely good, but the very best on earth. They accomplish all the business I have stated: they do it well, and they do it for nothing: they have jurisdiction of all common law causes over twenty dollars, of all cases in equity and probat; all cases of intestacy and of administration; besides the jurisdiction over mills, roads, bridges, &c., and the people get the whole of this for nothing. With what do gentlemen propose to furnish a substitute for such an institution? They will give us a few ignorant Judges. These of course are to receive a salary. You cannot have less than two in each county; and what will you give them? You cannot offer them less than three hundred dollars, and their services are low at that. You must then have an expenditure of six hundred dollars a-piece for one hundred and five counties, that is, an expenditure of \$63,000, and then what is all your saving by the reduction of the number of the Legislature? Instead of our present upright justices of the peace, who have learned none of the tricks of the profession, you are to get a pettifogger, too young to understand his profession, or else an old one who never had brains to acquire it. It is with materials like these that you are to fill your seat of judgment, with young lawyers half read, who have some little knowledge of Blackstone: very small; very small indeed; and a few of the principal Statutes, or an old lawyer who is willing to take the place for three hundred dollars. These are to be your Judges. I confess they are the very last that I should choose for mine. This is the gentleman's expedient, and what conceivable benefit is likely to result from such a change? none whatever. You will get nobody for your Judges, but the very last men in whom the community will have any confidence. It is an old remark that in the administration of justice it is indispensable not only that it should be done fairly, and done promptly, but that it should be done to the satisfaction of the people. This is a consideration which a statesman will not fail to keep in view. And how is it administered in the County Courts? Mr. Chairman, I am sometimes tempted to believe that I am in a different part of the world, from the accounts some gentlemen give of these courts. I have long practised in them; I thought that I knew them well; my confidence has all sprung from observation and experience; yet it seems that they know nothing of law, and are wholly incompetent to the duties they perform. Sir, might not the same objection be urged against the trial by jury? We submit the law as well as the fact to men who are not lawyers, and yet we all see good juries and sound verdicts.

Is any charge of arrogance brought against our justices? do the people complain of them as tyrannical and overbearing? far from it. On the contrary, there is a purity, an easy unassuming unconscious dignity, and, above all, an impress of neighbourly kindness, seen and felt in the administration of all their powers, which has endeared these tribunals to the people, and procured for them universal respect. But we are told there will be cabals; there will be intrigues. Doubtless there will. There will be cabals, and there will be intrigues among men at all times, and in every place. But

what cabals and what intrigues are likely to arise in these County Courts? How many instances of corruption have been so much as charged against any of them? I know of but one, in the county of Berkeley, and I believe one more in the county of Amherst. Such is the amount of corruption which has been alleged against this entire body of men in the course of two hundred years. I will be obliged to any gentleman to point me out so much as a charge of corruption beyond this, and this so far as I know is a charge only. If there are cabals, they have never been charged to any unfairness of the justices in the discharge of their official duty.

But we are told that the County Courts renew themselves; that the justices have power to perpetuate their own body. Sir, I have seen them at this work. They first enquire whether an additional justice of the peace is required by the wants of the county: they then select the most respectable man they can find; they name him to the Executive as a fit person to be put in commission, and the Executive rarely sees cause to refuse the appointment. Much however has been said about the force of family influence. A friend of mine very zealous for the reformation of old abuses, said to me, some time ago, (and appealed to me for the truth of the remark), that the bench of justices of the County Court of Dinwiddie consisted almost exclusively of two families and their connexions; and I well remembered, and therefore admitted, that when I belonged to that county, the fact was so. But I asked him, in my turn, whether he had ever known that court to refuse or hesitate to nominate any person of any other family or connexion, proper to be put in the commission of the peace? He readily answered, No. Whether the number of persons of those families on the bench, at the time he spoke of, was not owing intirely to the numerousness and general respectability of those two families and their connexions in the county? This he readily admitted. Were not the justices in commission, highly respectable, honorable, honest men, fit and worthy of their station? Yes. Did they not do their duty, and administer justice promptly, intelligently, impartially, in a spirit of neighbourly kindness towards the people, and at the same time with firmness? Yes. Did they not administer justice to the satisfaction of the people? Yes. Heard you ever any complaint of them? No. Well then, said I, if justice was administered to me and mine, honestly, fairly and promptly, and administered without fee or reward, why should I care, that the judges were named *Goodwyn* or *Pegram*? As to incapacity and ignorance, I have seen County Courts which were among the ablest tribunals before which I ever practised, not excepting the Court of Appeals. They are in general able tribunals for all they have to do. This was eminently true of the County Court of Amelia twenty-seven years ago, when I practised there. I am for retaining the County Courts, if to retain them be possible. A friend sent to me an account of the expense of accomplishing in the County Court of Baltimore, what would be done in Virginia for nothing. The fees of the register of wills alone, were equal to what would be a salary for one of our justices. The charges of the Orphan's Court were two or three dollars a day, whether the session consisted of a day or an hour. In short, the costs beat those in our Court of Appeals all hollow. When I knew that the County Courts were to be assailed, I made out a list of these expenses, and according to my recollection, the amount greatly exceeded the revenue paid by the like number of people in any part of Virginia. Yet, gentlemen are for getting rid of this cheap system, and substituting a dear one in its place, the expense of which will greatly exceed all the saving we shall effect by reducing the Legislature. But that is not all, nor the tenth part, nor the thousandth part of what we shall lose, or of what Maryland lost, by exchanging her County Court system for Circuit Courts and justices with fees, and Courts of Probat. How much they pay in fees, I know not, but the sum is enormous.

When I was, sometime since, in the city of Philadelphia, a gentleman said to me, partly in jest, "You Virginians are very proud;" I replied, that I had often heard that charge advanced, and believed that there might be some truth in it, and that since I had crossed the Potomac, I felt a little inclined to indulge such a feeling myself. The gentleman answered, "proud as you are, you are not as proud as you ought to be," and he then went into an eulogium of our institutions, which I am unwilling to repeat. How he got his information, I do not know, but he was intimately acquainted with our circumstances, and especially with our County Court system, which he appeared to understand, at least as well as I did myself. By way of showing the contrast between the state of matters in his own Commonwealth and ours, he related to me this anecdote. He had once been foreman of a jury, when a black man was tried for stealing a side of leather. There was but one witness, and he was an apprentice. The black man had sold a side of leather to a white man, who was to pay the money down, but failed to do so. The black man, sometime after, went to the house of the white man to get the money; the white man was absent from home, and the side of leather lay in a shop where this apprentice was at work. Seeing his own property, which had not been paid for according to agreement, the black man laid it on his shoulder and carried it home. For thus resuming his own property, he was

committed by a justice of the peace to be tried for grand larceny. When a gentleman remonstrated with the justice on the hardship of the case, and asked him how he could do such a thing; the justice replied, "It was all his own fault, if he would have paid the costs, I would not have committed him." Sir, thus it is, and thus it will be obliged to be, if you put men into the commission of the peace, and allow them fees for their services. Litigation; petty litigation with all its evils will prevail and increase. Instead of composing the disputes of their neighbours, they will incite them to strife, for the sake of the lucre of gain. The office of a justice will come to serve as a mere place for pettifogging. But, gentlemen say, they do not wish us to abolish the County Courts, but only to give fees to the justices. Kentucky tried this tack, and enacted a fee-bill, and from that ill-fated moment, she found the justices of the peace prove a curse and not a blessing. All respectable men withdrew from the office; and to cure the evils which followed, the Legislature was obliged to narrow down the jurisdiction of the County Courts, until they reduced it to almost nothing. No, Sir. If you abolish the County Court system as it is now established, there is no other alternative, than a set of petty Judges with fees; than whom I can imagine no greater pest to this, or any other community. I do trust, that this ancient feature of the internal polity of Virginia, will be permitted to remain. Gentlemen profess vast veneration for the Constitution, but, I would thank them to tell me, what part of the Constitution they do venerate. Let what change be proposed that will, it is sure of having their vote. They abolish all they can, and yet they tell us, of their great and profound veneration for our ancient institutions. From such veneration, may God deliver all that I hold dear.

Mr. Henderson wishing to reply, moved that the Committee rise. It rose accordingly, and thereupon the House adjourned.

TUESDAY, DECEMBER 1, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Parks of the Methodist Church.

Mr. Henderson moved, that the Convention go into Committee of the Whole, but withdrew the motion at the request of,

Mr. COALTER, who rose and addressed the Committee from a written speech, as follows:

I have been a week in this Convention, and but within the last two or three days have been furnished with a copy of the reports of the various Committees which have been under discussion; and some reports of the Auditor.

I find that we are thrown on rather a tempestuous ocean; and not being accustomed to such voyages, I am getting somewhat sea-sick. I wish, if possible, to see land; to see my family, and to see my friends and constituents, who are looking out for the *good old ship*, the Constitution, with no little anxiety; and many of whom, I know, would be willing to obtain a policy of insurance for her safety, at almost any premium—I too, have been thinking of a plan by which we may perhaps get again into harbour, or at least into still-water. I have consulted no man about it; for, I wish no one to be implicated with me in what may be considered so *visionary* a scheme. Besides, I may be wrong in the extent to which I am at present prepared to go, in making a compromise, or may not be willing to go far enough.

I know nothing of the order and forms to be pursued for the purpose of laying before this body the plan, which has suggested itself to my mind, in order to bring our labours to a close.

We are pretty equally divided, it seems, on a great variety of *most important* subjects. It may be thought, that if those great subjects were grouped together, and presented to us in some single or tangible shape, containing, in the whole instrument, those things which can be *acceded* to on either side, and also indicating those which cannot, we might come to some agreement.

I find, on looking over the table furnished by the Auditor, that the whole number of freeholders in the State may amount, say to

By adding together the whole number West of the Blue Ridge, and including therewith, the counties of Loudoun and Fairfax, (supposed to have an identity of opinion, feeling and interest on many of these great questions) the whole number amounts, say to	92,856
	<i>non-residents and all.</i>
	48,920

Which deducted, leaves

43,936

It is supposed, however, that certain other counties below the Ridge, are also identified with them, if *not in interest*, at least in opinion and feeling as to some of these questions. This, though, is doubted; and it is said that the signs of the times in those

counties shew that there is in reality no such serious disunion in the rest of lower Virginia. Taking this to be so, the comparative strength is as

48,920 to
43,936
<hr/> 4,984

It is probable this majority would be lessened by estimating the number of non-residents.

But whether I am in the majority of freeholders, or in the minority, or whether from instructions, or other convictions operating on the Delegation from that section of the State above alluded to, as to the opinions of their constituents, I may hereafter find myself in a majority on this floor, is not the question.

The question with me is, whether should I be in such a majority against such a minority as would then be on this floor, and in the country, am I prepared to adopt an amendment to the Constitution, containing the mixed basis of Representation, or the Federal number in *both branches* of the Legislature? Now, though I most sincerely and religiously *think*, that this latter is what we ought all to agree to, and were it proper now, or should it become proper, I trust I can shew reasons enough to induce a *belief at least* that I am as sincere in that opinion as those are who entertain a contrary one, yet I could not exercise that power—no—I am not that man—I have Scotch-Irish blood in me, it is true—of that old blood which did not come here to enjoy a land already blessed with every thing that land can be blessed with; but to *subdue the wilderness*, and to make a country for themselves—who came over about the time when the *Solemn League and Covenant* was still talked of, and which I recollect to have heard talked of as far back as I can recollect any thing.

It is a blood I am proud of; and I hope I don't disgrace it when I say I would *tremble and shrink* from such a step.

Reluctant as I would be for this Convention to rise without doing any thing, I would rather do that—on this great question of basis of Representation. The power of *reason*, it seems to me, is gone—*forever gone*, perhaps on both sides—we must *compromise* or do nothing.

But, will I, if I have the power to do so, establish the mixed basis, or the Federal number for the most *numerous branch*? No, Sir, I would not even do this against such a minority in this House, and probable majority in this country, although the majority here be with me. *I will rather adjourn and do nothing.* I would rather call on the magnanimity of such a majority, to say, whether we ought not to adjourn, rather than do this thing? But, as it is *all-important* that we should *not so adjourn*, then I again call on them to say, whether, if *other great interests*, in which they, with me, feel most deeply concerned, can be saved, *at least for the present*, and until more time and reflection can be bestowed on them, this troubled ocean ought not to be at rest?

Whether this ought not to be done, even at the expense of *considerable sacrifices*?

And I call upon the other side to say, whether the storm is to continue to rage; or whether they will be satisfied with an *ample redress of real grievances*, leaving something for posterity to reflect upon and to do, if they think proper? I trust I will be met in that spirit of candour and open-heartedness, by which *I* feel myself actuated. As to the manner in which we shall come together, and as to many minor points, I am a *nose of wax*, to be fashioned as gentlemen choose. As to *great and essential points*, if they can't be compromised, I am a rock of granite; or what is nearly the same thing—a *Scotch-Irishman*. I am willing now, if it be the pleasure of the House, to expose fully my views.

In order to bring before the House what *I am willing to do*, as well as what *I am not willing to do*, I will have reference to the reports of the Committees, which have been under consideration—(all my projects may be said to be already in print :) It being always understood, that when I agree to any proposition, *by way of compromise*, to which it is known I am *otherwise* opposed, I am not to be considered as *committed*, unless other things, *deemed essential by me*, are yielded to me, or abandoned, as the case may be. Should others act with the same frankness, we may, perhaps, soon see whether we are likely to compromise. I will also premise, that if other schemes of compromise are proposed, *not touching certain cardinal points*, from which no evils have resulted, but leaving them to posterity to settle, I will feel myself quite at liberty to choose between them. Some of these have been presented. But I wish to see, *combined with them*, the *whole scheme* of the instrument, that I may say, whether, *on the whole*, I think it will be a blessing or a curse to the country.

Thus, then, and in this spirit, I am willing to agree to the first resolution of the Legislative Committee, and also, of course, to the second, or any modification of it, that may be satisfactory to a majority.

In lieu of the third resolution, I am willing to adopt the amendment, (No. 35,) offered by the member from Chesterfield. I would though, as at present advised, prefer to retain the provision in the original resolution, to be found in the third, fourth, fifth and sixth lines, so as to require some reasonable value to be affixed to all freeholds :

And I have reasons, which have considerable weight with me, and which I will be ready to assign, if necessary, for preferring to amend that amendment, by striking out the third resolution therein, concerning lease-holders. These, however, are not essential points with me; but it is a *sine qua non* with me, not to go farther than that amendment goes, in enlarging the Right of Suffrage.

In lieu of the fourth resolution, I am content to take the amendment, (No. 35,) proposed by the member from Goochland. That is also a *sine qua non* with me, if nothing better can be had—and I; moreover, think it important, that the Senate should have the right to propose amendments to revenue bills, as well as to any others.

I will, then, have no objections to the other resolutions of the Legislative Committee. As to the report of the Executive Committee, I am for rejecting the whole of it, except the first resolution, which ought to be amended by a provision, that the Governor shall be elected by the Legislature. This is a *sine qua non*—but whether he is to be elected for one or three years, is a matter of minor importance. The inclination of my mind, at present, is for the latter.

In lieu of the second, third and fourth resolutions, I would greatly prefer the proposition, (No. 29,) of the member from this city, to any thing else which I have hitherto seen. I will, however, be content with the will of the majority, on this point. It has occurred to me though, that this proposition might, perhaps be more acceptable, if five were the number—one of whom to be elected from the Western district, one from the Valley, two between that and Tide-water, and one below; Or, if four continued the number, to have one from each district. Thus, the circumstances and situation of each district, would, as it were, be represented in the Executive; and the people could more easily make known their wants. The changes that must be made in many of the laws, to fit them to a new state of things, is also a consideration with me. In executing many of those laws too, the Governor, it seems to me, must have assistance, as well as advice. This must be provided and paid for.

There is nothing in the report of the Judicial Committee, (in relation to which, I can or ought to express an opinion,) of which I can be said to *disapprove*, as I may possibly give some reasons, at a proper time, to shew that it might be safest to vary it in some respects. I allude particularly to the *Chancery Jurisdiction*—as, for instance, after the word “Courts,” in the second line, to introduce the words, “of Common Law and Chancery Jurisdiction,” so as to prevent the Legislature from a total abolition of *Chancery Jurisdiction*, in any shape. Should I conclude to propose any such amendment, I will, at a proper time, assign my reasons.

There is nothing, however, in that report, (on which I can vote) in regard to which I will not readily accede to the will of the majority, unless the words “Inferior Courts,” in the second line of the fourth resolution, can be construed as embracing *justices of the peace*, which I presume was not intended: and unless the eighth resolution can be construed to mean, that a Judge may be removed by a vote of two-thirds of the Legislature, not only for an impeachable offence, but for an opinion *honestly* given, but which may be unpopular, or considered erroneous by the Legislature. I feel satisfied it was not so intended; but I fear, lest in *trying times*, it might be so construed. I presume the object was to provide for the removal of a Judge, who, from age, confirmed bodily disease, or from any other incapacity, not of an impeachable character as a *crime*, is unable to perform the duties of his office.

I too, have bestowed a *Sabbath* in this work. It is lawful, *on that day*, to get our neighbours up out of the ditch. I thought it, therefore, not unlawful, and not knowing that others were making similar efforts, to try and get myself, as well as my neighbours, out of the *slough of despond*, into which we seem unfortunately to have fallen.

I owe it to myself *distinctly* to state this much; and, thus, according to my notions of a *fair, open, honorable* and *manly* compact, to present something *entire* to the view of the House. I am prepared to go thus far, in order to save some part of our *ancient and venerable institutions*. Our County Courts amongst, if not *above all others*. Sometimes, I think gentlemen only mean to scare me now—but I am scared enough already for all wise purposes. Scare me now and it may give me courage.

There is a great deal in good habits, both in individuals and nations—Train up a child in the way that he should go, and he will not depart from it. The habits—I mean the *political habits* of the people of this *ancient dominion*, are *good—peaceable—law-abiding—and loyal* to themselves and to the country. Change *them* and we may change the whole character and *moral influence* of this State, so happily and eloquently pourtrayed, on yesterday, by our venerable Chief Magistrate.

I think it is stated, perhaps in Mr. Jefferson's Notes, that our present Constitution is the *first written instrument* of the kind, in the history of man. Shall we expunge it from our records? We are told to look at other States—I tell other States to look at us. They *are* looking at us, and with an anxiety but little short of that with which our own people are looking at us. The children of Israel wanted a King, that they might be like the nations of the earth. They got their wish, and the *Chronicles* of those Kings shew how much they profited by it—I am no prophet to say what our

future Chronicles will be, but if the page is as fair a one, and if our people shall be as happy during the next fifty years, we will have made a lucky escape. Let others pioneer for us and make experiments; if *they* succeed better than *we* have done, they will do great things, and we can profit by it; if not, they may live to profit by our experiment.

We are *all* making a *grand experiment*. Let us not plant the whole crop in potatoes; let us have a mixed culture, lest we all come to want.

There is no disease so fatal to individual man—and it must also be so as to man in society—no disease which Heaven takes so little care to relieve him from, as that which he brings on himself, by *imagining* evils which do not exist in reality. All such repinings are ingratitude to Heaven, and, in individual man, too often end in suicide.

I say I feel bound in justice to myself, to make this expose; because I am told I am counted on to support the proposition of the member from Frederick. This, I admit, may be considered as true, *provided, nevertheless*, that he and his friends support me in the great and leading propositions which I have here insisted on; otherwise, not. These have been my views, and I have always intended so to express them.

It is true, I have been something like the man who sent his turkey to market with a note tied to its wing, informing all concerned that he asked 7s. 6d. for it, but if he could not get that, he would take 6s. Verily, it was said of that man, that he was more fool than knave. It does not become me to pay so high a compliment to myself; and, perhaps, I would not have been able to do so, had I known more of the nature of Legislative proceedings.

Be this though as it may—I feel for my brethren of the West—they have suffered injury and injustice; and I don't expect them to be as reasonable in their demands, as otherwise they ought to be; but there is a point, beyond which, I can't go. We may go on a while longer to try our strength; but if we can finally adopt amendments, such as I have indicated, and *no more*, we will have done much good; and I *humbly trust*, will have done no injury which that good will not compensate us for. We can't adjourn, either until next October, or *sine die*, if we have it in our power to do *this*, by a respectable majority.

It may be thought, that some of the various propositions, lately offered, will be more acceptable, and command a larger majority than what I have thus proposed. It may be thought most advisable to adopt some one of those schemes, even at the expense of much which I hold so dear. Be it so. I suppose we must try it. If we fail, we have only to turn back and see whether there is any thing good in my poor efforts.

I won't give up the ship yet.

I have the consolation, too, to *stand alone*—*my sin is on my own head*—my colleagues are not committed; and my people will hear of my course time enough, I trust, to recall me, if I am going wrong.

I myself may think some of those schemes better than my own; and, at all events, if I think any or all of them better than that which is offered by the member from Frederick, so long as that is unaccompanied by a willingness to accede to *my terms*, I must, of course, vote for them.

Let us, in some way, become reconciled to each other. The people of the West can't do without us, nor can the people of the East do without them—neither of them can do without the internal improvement of the country. This is now beginning fully to be felt below.

Be ye reconciled one to the other; and there will be joy in Heaven, and peace on earth, and good will towards men.

Mr. Summers, after some prefatory remarks, offered the following amendment, which he intended only as expressive of the general principle he wished to see adopted, leaving the details to subsequent arrangement:

Resolved, That each county ought to be divided into wards, so that there shall be not less than three, or more than seven in any one county: that there ought to be elected in each ward, by the voters qualified to vote for members of the House of Delegates, one Commissioner, and that the Commissioners elected in the several wards, ought to form a Board of Police for their respective counties.

Resolved, That the Commissioners of Police ought to go out of office, one at the end of each year, to be determined in the first instance, by lot; and that successors ought to be elected by their respective wards, to serve for a number of years equal to the number of Commissioners in such county, so that one Commissioner of Police may be chosen in each county at every annual election.

Resolved, That the Boards of Police ought to be charged with the superintendence and direction of the fiscal concerns of their respective counties—with power to assess, levy, and cause to be collected, all local, county, or ward taxes, and to direct the disbursement of the same, to superintend all provisions and expenditures for the support of the poor, and that the opening, preserving, and improving, of the public roads and other highways, with the erection of bridges, and other public structures, ought to be confided to the Boards of Police.

“Resolved, That it ought to be the duty of the several Boards of Police from time to time, or whenever required by the Governor, to recommend to him suitable persons to fill the offices of justice of the peace, and to make any other recommendations, and perform such other duties, as may be required by law.

“Resolved, That the proceedings of the several Boards ought to be recorded and preserved by such officer as the General Assembly shall designate, and that the Commissioners ought to receive a moderate compensation for their services, to be ascertained by law, and paid out of the county funds.

“Resolved, That each Commissioner of Police ought to be a conservator of the peace within his county, and, if holding no office or employment incompatible with that of justice of the peace, ought to be included in the Commission of the Peace.”

Mr. S. explained and defended his amendment, objecting to the power of taxation now deposited with the County Courts, and also their power to fill the vacancies in their own body. If these two features were removed, he should desire the County Court system to continue: if not, he should be opposed to giving them a Constitutional perpetuity.

The amendment was referred to the Committee of the Whole, and ordered to be printed.

The House then went into Committee of the Whole, Mr. Stanard in the Chair.

Mr. Bayly explained more fully the ground he had taken yesterday in reply to Mr. Giles, referring more at large to the opinions of Mr. Jefferson, expressed in conversation shortly before the Staunton Convention. Mr. B. then went into an explanation of the course he had taken during Mr. Jefferson's administration, shewing how far he had approved, and on what points he had dissented from Mr. Jefferson's policy.

Mr. Henderson considering the question in relation to the County Courts as of minor importance, in comparison with the great questions of Representation and the Right of Suffrage, moved to pass over for the present the report of the Judiciary Committee and take up that of the Legislative Committee.

Mr. Leigh remonstrated against this course, as the gentleman who was to fill the place of Mr. Mennis had not yet arrived, and another gentleman on that side of the House was absent.

Mr. Henderson, to meet this objection, offered himself to withdraw, should any vote be taken, calculated to settle important and controverted questions, which would balance the absence of the new Delegate: as to the other case, absences would always be occurring on both sides, and furnished no just cause for delay. He hoped they should proceed to take the question without much debate, after the authors of the several *projets* had been heard.

Mr. Leigh objected, assuring gentlemen that no turning question would be taken without much and strenuous debate.

Mr. Cooke was also opposed to the motion of the gentleman from Loudoun.

After a remark or two from Mr. Henderson, the question was taken on passing over the Judicial report, and negatived—Ayes 27.

Mr. Doddridge confessing his mind to be so much engrossed with the more important questions pending, that it was with difficulty he could bring it to the subject before the Committee, moved an adjournment.

But the motion was unsuccessful—Ayes 36, Noes 48.

The Committee then returned to the consideration of the report of the Judiciary Committee, and the question still being on the motion of Mr. Bayly, to strike out in the first resolution of that Committee, the words, “and in the County Courts:”

Mr. HENDERSON said, he reluctantly engaged in the discussion of this subject; and that he would, certainly, have declined it, had not the gentleman from Chesterfield, (Mr. Leigh,) gone into an argument last evening, after he, Mr. H., had, in order to save the time of the Committee, proposed to wave further debate. Mr. H. stated that, in supporting the motion to strike out the words “County Courts,” and to insert “justices of the peace,” it was his wish to vest the judicial power of the Commonwealth in the Court of Appeals, the Superior Courts, meaning the General Court, the Circuit and Chancery Courts, or such substitutes for them as legislative wisdom might devise, and in the justices. Thus the County Courts would, like the Chancery and Circuit Courts, be alterable as the interests of the State required. The gentleman had asked if it was the policy of the friends of the motion to distinguish the Court of Appeals, and place it above the controul of the Legislature? Surely, said Mr. H. no lawyer of experience will require argument to prove that the Supreme Appellate Tribunal of the State should have its foundations firmly laid in the organic law. *It is clear that such is the result of any written Constitution.* If the Legislature overstep the limits of the Constitution, there must be a tribunal to declare its acts invalid: it would be a mockery to place this tribunal at the mercy of the Legislature; a solecism in politics. From this reasoning the supremacy of the Court of Appeals arises; and the gentleman from Chesterfield will be the last man to controvert the reasoning or to deny its consequence. Here we all agree—farther, in giving Con-

stitutional consecration to the courts, it appears to me we are forbidden by wisdom and discretion to go. The great principle of policy which founds and shields the Court of Appeals, has no sort of application to the other courts; and, least of all, to the County Courts. The General Court, which decides ultimately on the life of a citizen, with the aid of a jury, and the Superior Courts of Chancery as well as law, are, to use the language of gentlemen, to be subjected "to the whim of the Legislature," while the County Courts are to be placed beyond its reach. Is this wise? Is it consistent? Is it not slighting the superior, and nursing the inferior? What, in the nature of things, in the merits of the subject, justifies this inversion of the order of reasoning, and political action? A plain man, who estimated things according to their actual comparative value, would be surprised to hear learned gentlemen consigning all these great courts, without hesitation or regret, to the ordinary Legislature, while they declared the County Courts, too precious for its touch, too sacred for the operation of the discretion of the Legislature, or the judgment of the people. In all this, I think, I can discern the influence of habit, and the delusion of prejudice.

The gentleman, said Mr. H., treats the proposition, which I have the honor to support, as if it went directly to the abolition of the County Courts. This is not true; and the Committee ought not so to regard it. I propose to let these courts stand where their superiors stand, *at the disposal of the Legislature, as the public interest may require.* It is due to candour to say, that I am decidedly of opinion, they ought to be abolished; but the question of their continuation, or abolition, is merely sought, by our plan, to be left open; while by that of our opponents, the hands of the Legislature are to be always tied, whatever may be the course of public opinion; whatever the exigencies of the State in all future time may require. Compare our views farther. We say, if these courts are good, and the community prefers them, the Legislature, which speaks its voice, will retain them; if bad, it will remove or change them. What is the language of our opponents? "Consecrate them. Retain them forever. Silence public opinion on the subject." Is not this a tacit admission, either that the courts will fall by their own weakness, or that the people are not to be permitted to judge for themselves in their behalf? The organic law ought to be simple; it should establish and sanctify great principles which are true now, always have been true, and always must be true, embracing details so far only as may be necessary to carry those principles into action. All the rest is a fair and proper subject for the operation of public opinion and the public interests, as new lights, or varying circumstances demand modifications or changes.

Gentlemen insist that these institutions are the fittest imaginable; that they are full of wisdom, that their decisions are oftener affirmed by the Court of Appeals than those of the Superior Courts of Law and Equity. Let us examine this matter. A man cannot make a boot, give an opinion as a lawyer, build a house; in short, he can do nothing which requires skill and knowledge, in any department, without previous study or instruction. Yet law, the most difficult of all sciences, is to be seized by intuition. Men are to be born judges, as they are said to be born poets. I should be glad to know, Sir, if gentlemen would test the sincerity of this declaration by taking the opinion of an ordinary County Court justice, rather than that of the gentleman from Chesterfield, when their farms are at stake. That gentleman told us, the other day, that his child was sick. I take leave to ask him a question. Did he send for a justice of the peace, a lawyer or a carpenter to prescribe to the interesting object of his affections, or did he call in a physician? one skilled, studied, practised in the healing art? The answer is easily known. Such, Mr. Chairman, is the difference between the speculations and the conduct of ingenious gentlemen. But the argument in favour of the superior capacity of the justices proves too much; else, our courts are radically wrong in their structure. If they are thus wise, why have any Superior Courts or Appellate Courts at all? Why not rest all our rights upon their decisions at once, and avoid the vast delays and charges of appellate litigation? Surely we ought either to do this, or to make the Court of Appeals. For if it be true, that the less law a man knows the better judge he is, the magistrates are certainly better judges than those who sit on the bench of the Court of Appeals. But, Sir, it is not true that the Court of Appeals affirms more of the decisions of the justices than of the Superior Courts; for, of twenty decisions of the County Courts that go to the Superior Courts of Law and Chancery, not more than one is taken to the Court of Appeals. And this is the solution of the paradox. I will add that, if the judgments of my old and able friend, now prevented by the visitation of Heaven, from continuing to the tenth Judicial Circuit his useful talents, had been reversed by the Court of Appeals; or, if those of the Chancellor who now so advantageously acts in that quarter of the State, were to meet a similar fate, the bar of the country would *doubt* while it *submitted*.

Again, it is urged that sound policy persuades us to respect the habitudes, and the very prejudices of a people. Admit it; is not this appeal referable to the Legislative body rather than to the Convention? Gentlemen assume too much when they sup-

pose the people of the State are so wedded to these tribunals; and, if they were, where is the danger of their abolition? Do not the zeal and pertinacity with which gentlemen refuse to trust public opinion, clearly shew their diffidence of that attachment of the people to these courts? So much are the arguments and the course of gentlemen at war with each other! I believe it is true that in the lower country, where gentlemen own many slaves and have ample leisure; and where there is less enterprise and less business, these tribunals answer well, and may be well approved. Not so in the upper country generally. There the equal division of property, the necessity that men are under to attend to their own affairs, with many other circumstances, serve to make these courts a perfect incubus. Their delays in the county of Loudoun are oppressive in the extreme; and their expenses vastly greater than those of the Superior Courts. I have, said Mr. H., repeatedly, and almost habitually, advised my clients, who lived any where except in the immediate neighbourhood of the Court-house, rather to abandon *small disputed claims*, than put them in suit. I have often known the costs in such cases, without including extraordinary expenses or loss of time, to exceed the subject of claim; and witnesses to attend, on the courts, at such loss of time and money, that it would have been better for them, far better, to have paid the claims themselves. Such are our cheap tribunals—the dearest for the subjects of litigation, in the world!

The gentleman from Orange has commended these courts, and has informed us that he is a practitioner in them, of a quarter of a century standing. And so am I, Mr. Chairman, God help me! Of a disposition more churlish or less grateful than that of the gentleman, I cannot unite in his praises. The gentleman is an industrious man: by day he rode, and was compelled to trim the midnight lamp, in order to acquire a competent knowledge of the principles of his vocation. I hope, like that estimable gentleman, I am not indolent or idle. Behold the result of the action of these courts upon us. We hear an illustrious gentleman, the colleague of the gentleman from Orange, and my honoured colleague, termed *venerable*. I fear, Mr. Chairman, if grey hairs and wan faces could confer the title, we should have two venerable gentlemen from Orange and Loudoun; for, truly in those particulars, I fear we may compare with our respected colleagues. Sir, I cannot thus deem of these tribunals. The gentleman from Orange seems to think, that these County Courts are admirable machines for the diffusion of political information. In my humble opinion, they are better calculated, much better, for the diffusion of intemperance amongst the people. A Court-house or a tavern is a poor political lecture-room. And I cannot but believe this idea, which I have heard advanced before, to be quite chimerical. Establish good schools. Educate your people, and they will become politicians fast enough, without giving you the trouble to make courts to render them so. The true interest of individuals, as well as of the community, is to interrupt the people as little as possible in their pursuits of industry, and their domestic quiet and purity. Frequent assemblages, in large numbers, with little business, lead to drunkenness and vice. Such is the result of my observation. I believe it is correct as to all classes of men.

But, Sir, there is another great evil incident to these courts: *they tend to make the lawyers ignorant and to impart that ignorance to the benches of the Superior Courts.* This is obvious to a superficial observer: and it is a great public calamity. Look at the matter. How little legal knowledge suffices to fit a man to become an advocate in such a court! What motive is there to study, in order to practice successfully in them? Is not the capacity to ride far and fast, to bear the inclemencies of the weather, more important than learning? Is not assurance more valuable than mature judgment? Is it not the tendency of such courts to make a lawyer a post-rider? An able Judiciary is an inappreciable treasure. Who will expect to find one under such a discipline? From such a bar? What is your situation? What your prospects? Are you to find all your Judges in your cities, or to fill your benches with lack-learning lawyers?

To my astonishment, gentlemen extol these courts as peculiarly suited to the interests of orphans. It is true, Sir, the justices are, in general, worthy men; and feel as such men do, for the fatherless. Notwithstanding this, such is their ignorance of the science of equity, and such their necessary devotion to their own affairs, that, in the region of country where I live, if you suppose a subject too small for the cognizance of the Superior Court of Chancery, the orphan is as effectually at the mercy of an adroit and unprincipled fiduciary character, as is the bleeding lamb at that of the wolf which is devouring him. Here Mr. H. stated facts within his own knowledge as illustrative of the superiority of the orphan system of Maryland, and commented upon facts stated by Mr. Leigh. Mr. H. adduced other examples of the utter incompetency of these courts, derived from counties with whose business he was acquainted, but not his own. These incidents were of a ludicrous character, and were avowed to be an offset to anecdotes of a similar cast, related by Mr. Leigh, which went to bring into disrepute tribunals in Maryland and Pennsylvania, which Mr. H. contended, were much superior to our County Courts.

Mr. H. declared that he had seen magistrates, *not in the county of his residence*, in a state of ebriety on the bench; that such spectacles were disgraceful; and remarked that, if he had not been misinformed, in one of the counties of the lowland, so much praised by the gentleman, a recent occurrence had taken place not very creditable. These facts were painful in the allusion to them, or reflection upon them; but, when an interesting subject was to be acted on, the truth should be revealed. We have been repeatedly told, said Mr. H., that we were a great and happy people, and that these courts contributed much to the production of these felicitous results. It is difficult to conceive how such causes should lead to such consequences. For our greatness I will not debate it. Others may possibly be regarded as better judges of it. At any rate, it were as well to leave them to proclaim it. But we are exceedingly happy. Happiness, continued Mr. H., is a difficult matter of investigation. I should, however, suppose, take them aggregately, the people I have the honor to represent in part were somewhat more happy than those of lower Virginia. But, Mr. Chairman, did you ever, in a sickly country, ask a pale-faced, feeble man or woman, if it was unhealthy in the neighbourhood of his residence? Was not the answer "oh no," not immediately hereabout, but in the neighbourhood below they are very sickly indeed, and several have died lately? Did you, in a town in whose streets the grass that grew up, was little disturbed, ask if commerce was not declining? Was not the answer, "No truly, we were never doing better, there is not a house in town for rent?" Mr. Chairman, I will not dispute our greatness: it were invidious to do so. And I will leave every one to judge of his own happiness, with a sincere desire that it may please God to make us all happy. What Cicero predicated of immortality may be said, with equal truth, on this subject, "if it be a dream it is a sweet one." However these points may be determined, I may, without incurring the imputation of temerity, assert that our County Courts have never rendered us either great or happy.

The gentleman asked what we meant to spare in our sweep of reform? Let him tell me what he means to surrender of the abuses, under whose united pressure we are groaning? I am, myself, disposed to spare all that is right, and to sweep all that is wrong.

It is not to be inferred, Mr. Chairman, by the course of my argument, that I feel the smallest disrespect for the gentlemen in the commission of the peace, especially in the county of my residence: those who so interpret my remarks will do me wrong. I speak against the tribunals. Although suitable half a century since, I pronounce them, at this day, and, in the part of the State with which I am conversant, worn out, and unfit, entirely so, for the end of their institution. I am confident I do not err, when I declare that, of the magistrates of the county of Loudoun, five out of forty would not refuse to sign a petition praying the abolition of their court. Many of these gentlemen are my friends. They have too much understanding to be displeased with me for endeavouring to prove what they know to be true, and to promote what they ardently wish.

Mr. Scott bore a favorable testimony to the respectability of those courts in Fauquier county.

Mr. Doddridge next addressed the Committee, nearly as follows:

I mean not to enter into the argument of the proposition, nor to say whether the County Courts ought to be abolished or not. That has been done by others and is not properly under consideration; but the true question is, shall these courts exist independent of the Legislative will, and above that will? or, shall the General Assembly have power over them? The other day a gentleman on this floor, described a race of politicians, who are of opinion that each son has a patent right to be wiser than his father. But neither that gentleman nor I have any confidence in such politicians. I have as little in another order of statesmen, who attribute to the present race, superior wisdom to every person who shall follow them in life, or in office. I am not certain what my constituents would do with these Courts, if it were left to them to retain or put them down. I do not know their wishes on that point, but I do know that they desire them to be placed within the power of the General Assembly. Should the public will sustain them, they will be sustained, and otherwise, not.

Doubtless there are matters which should be unalterably laid deep in the foundations of the Constitution—such are the departments of Government—the division of their powers, and a reasonable degree of Judicial independence. There are some powers, from the exercise of which the Legislature ought to be restrained. At no time should an *ex post facto* law, or law impairing the obligation of contracts be passed, nor any provision for suspending the writ of *habeas corpus* in time of peace, or taking away the trial by jury, in criminal cases.

The County Courts are inferior tribunals, and to place them on Constitutional foundations, is to suppose that at *no future time* and under *no possible* circumstances, will it be wise to change them for some other establishments more suited to the times; and by placing these courts above the General Assembly, we put them beyond the controul of the people, and we should not do this, unless we are satisfied that the judg-

ment of posterity cannot be safely trusted to meddle with even County Courts. I hope, therefore, they will be left within the scope of Legislative power.

Mr. Marshall wished to offer a few observations, merely with a view to put gentlemen on a right footing, as to the nature of the question. They spoke of the County Courts, as if the report of the Legislative Committee proposed to perpetuate them in precisely their existing form, and with their present powers. They speak of the unfitness of those courts for all the jurisdiction they now possess; and if they prove, or think that they prove that the present organization of those courts can be improved, they think they have thereby proved that this clause ought to be stricken out. But the whole jurisdiction of the County Courts is submitted to the Legislature; the Legislature may take away the whole of it, and leave them to exist in form only. What injury will ensue? no salaries will be taken away. The form of a County Court will be left in existence, but without any power. Can they do any injury? But, if they cease to be nominal, they cease to be real. While they exist, they are capable of receiving any jurisdiction the Legislature may choose to give them. But if they do not exist, they can have no jurisdiction. Gentlemen, therefore, mistake the question, and speak to a matter not before the Committee, when they shew that these courts can be modified to advantage. Some gentlemen are opposed to the mode of appointment in these courts; but that question is not before the Committee. For myself, I prefer the existing mode; others may differ from me. Let the mode of continuing them be changed, still the courts themselves will be preserved. We have not reached the resolution which provides for that; when we shall reach it, if gentlemen wish the general system preserved, but the mode of appointment changed, they can give their opinions then. That question is not now before the Committee. The only question is, whether the form of the County Courts shall be preserved. When gentlemen say that to strike this clause from the resolution amounts to nothing, and that the courts nevertheless may still be preserved, I beg leave to repeat, that if the form of the resolution remains and you strike out the words "and in the County Courts," you take away from those courts all capacity to receive Judicial power, and do not leave the Legislature power to vest in them any jurisdiction. I speak of the resolution as it now stands. It may indeed be altered, so as to leave all the jurisdiction in the power of the Legislature, and I wish they would suggest such an alteration. But as the resolution is now drawn, if you strike out this clause, you leave the County Courts incapable of receiving any Judicial power whatever. You enumerate all the tribunals which are to possess Judicial power; and tribunals not in the resolution, can have none. Let it be recollected that all the various services performed by these courts, and which were enumerated by the gentleman from Chesterfield, (Mr. Leigh,) are portions of Judicial power.

Mr. Doddridge asked, what it was that rendered it impossible that these courts could receive Judicial power, if the express mention of them were stricken out.

Mr. Marshall replied, that it was because the resolution professes to enumerate all the courts in which the Judicial power of the Commonwealth was to be reposed. If County Courts are stricken out from that enumeration, they will be incapable of receiving any part of that power. Why should this be done?

Mr. Henderson said he differed from the opinion just expressed. Supposing the clause to be stricken out, the County Courts would still be included under the words of the clause immediately preceding, viz: "such Inferior Courts as the Legislature shall from time to time ordain and establish."

Mr. Marshall said, he was truly sorry so often to trouble the Committee, but he wished to remove a misunderstanding which seemed to have obtained. If gentlemen would look at the residue of the resolution, they would perceive that it goes on to give salaries to all the Judges of the Inferior Courts. This, surely, does not extend to County Courts.

It was plain, therefore, that the resolution does not comprehend County Courts, when it speaks of "other Inferior Courts," but means to designate them by the specific and appropriate term.

Mr. Powell opposed the amendment, and testified to the manner in which the law business of his own county, (Frederick) had been conducted for the last five years, during which they had for the most part been without any Circuit Court Judge. He eulogized the magistrates of that county—and attributed the opposite experience of Mr. Henderson, to the peculiar character of the people of Loudoun, consisting of a mixture of persons from without the Commonwealth—while those of Frederick were of the true old Virginia stock.

Mr. Mercer protested against such comparisons as unparliamentary. He vindicated the character of the citizens of Loudoun with much animation.

Mr. Powell explained. The people of Loudoun might be worthy, honest and industrious, and yet not fit to make County Court magistrates.

Mr. Leigh went again into the defence and eulogy of the County Courts: adverted to their criminal jurisdiction, particularly over slaves, and insisted that that jurisdic-

tion could not so well be lodged any where else. He dwelt on their value as a school for young practitioners, in which all the greatest men of the State had at first been trained. He remarked on the peculiar situation of Loudoun, and charged upon that county the chief agency in introducing the Circuit Court system into Virginia, which made no provision in case of the sickness of the Circuit Judge.

He replied to the arguments of Mr. Henderson—urging the power of a jury to judge of law as well as of fact, as a reply to that part of his speech, in which he had urged ignorance of law and equity as an argument against the County Courts. As to their power to recommend suitable persons for magistrates, the Executive must act on some recommendations, and it was better they should be given openly than in a secret and irresponsible manner.

MR. CAMPBELL of Brooke, rose to address the Committee :

Mr. Chairman,—We have now got the *County Court* system fairly and fully before us. The gentleman from Chesterfield has even gone into the mode of appointing the justices. I rose some time ago to make a remark in reference to the construction given to the first resolution of the report of the Judicial Committee, by the honorable gentleman from Richmond, (Mr. Marshall). I rise now to do more ; to carry my remarks a little further. He supposes that the Judicial power vested in these courts by the Constitution will be unappropriated, if they should cease to be *Constitutional Courts*. I had thought that it would still continue in the *Inferior Courts*, of which the County Courts to be established by the Legislature would be one.

You know, Mr. Chairman, that the County Courts were once rejected as Constitutional courts, in the Judicial Committee. You moved for a re-consideration, a member being then present who was absent when they were rejected—they were then carried by one of a majority, one of the friends of reform being absent. This fact will shew that the report of this Judicial Committee, at the head of which is the venerable gentleman from Richmond, is not to be regarded with all the authority which is commonly attached to the reports of Committees.

On the 24th of October, I had the honor to present to the Convention a substitute for the first resolution, which embraced the amendment now under consideration. That substitute presented a Court of Appeals and such Inferior Courts as the Legislature might from time to time ordain and establish, as the only Constitutional Courts ; leaving it to the wisdom and experience of the Legislature to establish and regulate *County Courts*, as in their wisdom might seem good. This was placing the utility of these courts where we humbly conceived it ought always to rest, under the supervision of future Legislative bodies.

I have been disappointed in the mode of defence adopted by the gentlemen who are for giving them a Constitutional existence and character. They are for proving their claims to such a distinction from *testimony*. One of the most illustrious sages which Virginia has produced, the immortal Jefferson, has testified against them. His testimony has been assailed by the gentleman from Chesterfield (Mr. Leigh) on the ground of incompetency ; for, says he, Mr. Jefferson never practised law before a County Court, consequently could know little about them. But I am informed by a gentleman on my left, that he was a justice of the peace, and sat upon the bench of his own county, and therefore had the best opportunity of testing their merits. But the venerable gentleman from Amelia, (Mr. Giles) has eulogized them. The gentleman from Orange, (Mr. Barbour,) the gentleman from Augusta, (Mr. Johnson,) and other gentlemen from different quarters, have given their testimony in favor of them : Some of them too from the experience of twenty-five years. They affirm that they are one of the wisest and most beneficial institutions in the country, if not in the world. Now, without imputing any thing to their motives, or to their capacity to judge of them, so far as their experience has gone, I may be permitted to remark, that the relations in which we stand to persons and things, and the *media* through which we view them, generally, and often imperceptibly, influence our judgment, and lead us to very different conclusions. Were we, Mr. Chairman, to ask the Autocrat of all the Russias, what he had to testify concerning the Government over which he presides, he would doubtless say it was the best on earth. Were we to ask the King of Great Britain what he thinks of the Constitution, Government, and laws of England, he would doubtless say they approached almost to perfection. Yes, Sir, were we to ask every Peer of England, every member of the House of Lords, one by one, what is the character of all the English institutions? each and every one of them would doubtless testify, the very best on earth. Thus, Sir, some gentlemen here give the highest character to the County Courts ; others, however, testify against them. They view the system through different *media*, and stand in different relations to these tribunals. But as we have heard much testimony on this subject, and the testimony of one Governor of this Commonwealth in favor of this system, we shall present as a *per contra*, the testimony of another Governor of this same Commonwealth.

It is from the message of the Governor of this Commonwealth in the year 1810, (Judge Tyler). Towards the conclusion of his message, he gives the following cha-

acter of our Virginia County Courts: "As to the County Court system, every experienced and reflecting man must see and feel the incompetency of those persons whose daily avocations prevent any acquisition in legal knowledge, to discharge the important trust reposed in them of deciding between man and man, on their most important legal and equitable rights. Suppose it should be necessary, as it often is, that instructions should be moved to aid the jury as to the evidence adduced on a point of law arising out of the facts of a cause, what respect will an intelligent jury pay to them, when they are sensible that a little time before the justices were only jury-men, and could not be made judges of the law by a mere translation of them from a jury-room to the bench? They would in such a case (which often has happened) act for themselves, well knowing that the blind cannot lead the blind. Besides, it is not just to call for so much public duty from the magistrates, without any compensation, except that precarious one arising out of the office of Sheriff, which may be obtained once perhaps in the course of one's life. At present a Judge rides into every county of the State; let his jurisdiction therefore be extended to cases generally, and limit the County Court jurisdiction to local matters, and to cases of small importance, bringing back the out-of-doors authority of a single magistrate to what it formerly was. At any rate let the Superior Courts have concurrent jurisdiction, and leave it to every man's option to go into either court he may please.

"I by no means mean to detract from the merit of the County Courts. They are a valuable branch of our Government, and deserve, in general, much of their country. But those citizens who fill the high office of dispensing law and justice, certainly should be better qualified for so great a trust. And it is no reflection on those who are liberally endowed by nature or a superior education, to say that they may not be judges of law. These sentiments I submit to my country, with all due deference. They are such as I expressed in the Legislature *twenty-eight years ago*, and I never heard a reason advanced, which made me doubt for a moment the propriety of them."

Thus testifies the experienced gentleman, who, at that time presided over this Commonwealth; such, he adds, was the conviction, resulting from *twenty-eight years* experience, from an intimacy of more than a quarter of a century with those tribunals. This will certainly prove my proposition, that gentlemen may and do view persons and things, through different relations and different *media*.

Without hazarding any thing, I think, Sir, I may say, more of the happiness of this Commonwealth, depends upon the County Government under which we live, than upon the State or United States' Government. The more we circumscribe the supervision of any tribunal, the more interest we feel in it, and the more happiness or misery it bestows upon us. The more you enlarge it, the less interest. And, therefore, I venture to affirm, that no question which has been discussed in this Committee, is more intimately allied to our interests, or more conducive to our political happiness or misery, than the very question now before us. What Government is that, Sir, which has the greatest power to afflict us, or make us happy? It is that, Sir, which has the most limited jurisdiction; it is the tribunal of our own conscience. The quotation elegantly adduced a few days ago, by the gentleman from Chesterfield, forcibly applies here. "*Quis exul patria, se quoque fugit.*" Self-government, the government of our own passions, appetites, and propensities, more than any other Government, contributes to our individual happiness. Next to this, *family* government. We derive much of our social happiness from domestic government; because we are always under its influence. For the same reasons we are more interested in the County Government than in the State, or United States' Government, and more of our happiness depends upon it, than upon any other. Not merely, because it is nigher home, but because we have more to do with it, or under its jurisdiction. All the laws of the Commonwealth, reach us through the County Government. No matter whence the laws are promulged, they first reach us through the county tribunals.

Now, Sir, the citizens of any county in this Commonwealth, have no more control over these tribunals, than they have over the Government of France or England. They never created the officers who preside on the benches of the County Courts, nor the ministers who execute their decisions. We live under a Government not amenable to us, not *responsible* to us; because not created by us. The objections to these tribunals, arise from the *manner* in which they are created, from their incompetency to discharge those duties assigned them, and the consequent evil influence which they may exercise over the destinies of a county.

I heard, with much regret, the gentleman from Frederick, (Mr. Powell,) rise to sustain them: I say regret, because I have heard him with pleasure support the most Republican principles on this floor. But, how to reconcile these tribunals with Republican Government, I know not. At best, they are elective, and most generally terminate in a *hereditary* aristocracy. How a republican can advocate a system, which, forever, puts a county under the control of a few individuals, without a perfect abandonment of his creed, I am unable to perceive. And is not, Mr. Chairman,

every county in this Commonwealth, by the system, necessarily subjected to the government of a few individuals by a legal investment?

Let us, for example, place before us, the erection of a new county. A new county and a new court are by the same authority at once erected. Some four or five justices are assigned to the bench of this new county, and the county assigned to them. These justices are to nominate their *successors forever*. Thus the county is by an act of incorporation, or a charter, or by whatever instrument you may please to call it, signed, sealed, and delivered over to the four or five magistrates first appointed and their successors, as far as all the offices of trust, honor, and profit, as far as the public concerns and interests, as far as the public levies and their appropriations are concerned, or assignable; they are all given over by one general deed of gift to these justices, and their successors forever.

There are three influences, interests, or if you please, Mr. Chairman, three sorts of pride, to which this country is now subordinate; I mean, religious, family, and political pride.

The first batch of justices, we shall suppose, are either all, or a great majority of them, of one religious creed. I care not of what sect. They are all men of like passions. They have sectarian interests, and they have sectarian pride. Now, if they yield to the temptation, which their station, and office present, and to the feelings which the sectarian spirit creates and cherishes, will they not have the opportunity, (and will they not most likely embrace it,) of nominating such, and such only, as belong to their own party, to fill all vacancies which occur in their body? It is only necessary to show, that they will have the opportunity to do so, to prove the system to be a bad one. And that mankind are always too apt to secure every opportunity which is thrown in their way, to aggrandize their own interests, and gratify their own pride, is too plain; and, alas, too true, to need either illustration or proof.

It is not necessary for me to prove, that such has always been the case, and that such must always be the issue; but that it may be so, all must admit. Thus, one party rides triumphantly in the county, as far as court influences are concerned. They are the court party. And like the patented creed and party under a monarchy, they are wont to become insolent and over-bearing. I wish to give no opportunity for such a state of things, and must reprobate every system, which thus creates invidious castes in society.

But in the absence of such feelings, or in connexion with them, there is still a more dangerous domination to which this new county before us is subjected. The first lot of justices may all be of one family connexion, either related by affinity or consanguinity. If this be the case, how easy will it be for them to concur in keeping all the offices in the county in their own family? And if they should not all be of one and the same family, but of two or three families, how easy for them under this system to enter into a *co-partnership* understanding, and by a sort of *rotation* to secure to themselves the dominion of the county for ages? And, have we not heard that such, even to this day, is the fact in sundry of the old counties! But add to the *family* the *religious* pride, and who can resist their united influence?

But there is yet another sort of influence, which we choose to call *political*, because arising from those parties and factions which have existed in all Governments, and ever will exist, so long as men are governed more by passions and interest, than by reason. Lately it was, and yet in some degree, is, Jackson and Adams. It has been Federalist and Republican. Now the first appointment of magistrates may be of one political creed, or of another, and thus an undue preponderance is given to that which is placed upon the bench without the hope of removal. Thus in the original establishment of a new county, and a new court, there is a real subordination of all the interests of that county, as respects Government, to the influence of either religious, family, or political pride, cupidity and ambition, and sometimes to all of them acting in combination. And is this what gentlemen call a Republican institution? the best, the very best, which human ingenuity can devise, and which the world has ever seen!!

Next to the manner of creating these tribunals, the variety of powers and functions which are lodged in the same hands, and their incompatibility with each other, have been for a long time an object of serious and just complaint. These are fully exposed in the very learned dissertations of a highly respectable authority, (Judge St. Geo. Tucker.) I do not quote his words, but I think I give the substance: Justices of the bench, says he, as such, may be elected to either branch of the Legislature, and are very frequently elected to the House of Delegates. While the character of the justice is merged in that of the Legislator, he is under the present system, Constitutionally authorised to legislate for himself. He may enact the law under which he chooses to officiate at home, and thus, make his own office, what he wishes it to be. He can also in part create the Governor, who, is afterwards to appoint and commission such of his friends as he may nominate to fill vacancies on the bench. He may also assist, in creating the Judges of the Supreme Courts, who, are to judge of his official proceedings. As Legislator, he may create Major and Brigadier Generals from

amongst his friends upon the bench, if he pleases. Under the present system, he may, and in part does, create and govern all the State officers, from the Treasurer down to the State Attorney in his own county.

When on the bench at home, they are judges in all cases of life and death, when a slave is to be tried, and of all offences under the grade of felony. They constitute an Examining Court, when any free person is brought before them accused of any crime amounting to felony at common law, and may remand him for a trial to the District Court, or discharge him as they think proper. They are also judges in all other civil causes arising within the county, whatever may be the amount, both at common law and equity, and without appeal when the sum is not over ten dollars.

As police officers, they open roads, build bridges, erect prisons, and court houses; and levy the expenses thereof upon the county; and last of all, recommend to the Executive, whom they are willing to admit into their own body.

At one and the same time, they may be the Judges of the County Courts, military officers of any rank whatever, State Legislators and members of Congress. They, in short, unite in their own persons all sorts of powers, Legislative, Executive, Judicial, military; and if all these can be safely lodged in the same hands, and at the same time, then it must follow, and undeniably too, that all the doctrines on which our political system is founded are erroneous and fallacious.

May I not ask, Sir, what are the fundamental doctrines of our Government? Is not the following one of them? "All power is vested in and consequently derived from the people. Magistrates are their trustees and servants, and at all times *amenable* to them." When did the justices of the peace derive their power from the people; and how, or in what sense are they responsible or *amenable* to them? Why then hold this doctrine to be true, and deny it in practice? I must always recur to fundamental principles, for one good reason, because I cannot reason without them. If I mistake not, it is written in the sixth article of our Bill of Rights, that no persons in this Commonwealth, "ought to be taxed, or deprived of their property for public uses, without their own consent or that of their Representative elected by them." This is deemed essential to the liberty and happiness of our community. Now, I ask, do not the magistrates composing the County Courts tax us, and deprive us of our property for public uses without our consent, or that of our Representatives? When did we authorise them, by any act of ours, to levy taxes upon us? They have no more right to tax us, by any act of ours, nor according to the doctrine just now *quoted*, than we have in this Convention to tax the citizens of Ohio. It is, in my humble opinion, as real a grievance of which we complain, resulting to us from this system, as was the complaint of this Commonwealth when a Colony, against the right usurped by the English Government, to tax us without our own consent, or that of our Representatives.

Does not another of our political maxims teach—"that no man, or set of men, are entitled to *exclusive*, or separate emoluments or privileges from the community, but in consideration of public services, which, not being descendible, neither ought the offices of magistrate, Legislator, or Judge, to be *hereditary*?" Does not the County Court system virtually repudiate this maxim? Does not the system confer *exclusive* privileges, without, and anterior to any public services? And does it not tend to make the magistracy *hereditary* in certain families?

But again, does not the third article of the Constitution, the existing Constitution of this Commonwealth, declare, that "the Legislative, Executive, and Judiciary Departments of Government, shall be separate and distinct, so that neither exercise the powers properly belonging to the other; nor shall ever any person exercise the powers of more than one of them." This is clear and express. But mark what follows—"Except that the justices of the County Courts shall be eligible to either House of Assembly." This arbitrary exception shews, that it is not compatible with the doctrine of the framers of the old Constitution. They saw it was incompatible with the truth which they had propounded, and declared it an *exception*. Why was the exception made? Tradition informs us, that most of the influential men, in what is now called old Virginia, at the time of the Revolution, were magistrates on the bench; and if proscribed from the Legislative Hall, it would have endangered the great cause of liberty and the rights of man; and as Virginia wished to rally all her forces and to concentrate all her energies, she was willing to make an exception in favour of the magistrates of that day. But they declared it an *inconsistency*, and so it is. Attached to such a declaration, it is as incongruous, as if to a series of laws prohibiting murder, it were added, "but killing a man is not murder." But time has consecrated the *exception*, and the error equally with the principle; and many are as tenacious now of the exception as they are, yes, more than they are of the *principle* from which it is an exception. However well it may have operated at that time, during the struggle for independence, it has not operated so well since.

The Constitution gave the magistrates no reward whatever for their services. But in making them eligible to the General Assembly, it put it in their power to provide

for themselves, which they have since done. It is known, I presume, to every member of this Committee, that generally a quorum, and often a majority of the House of Delegates, is composed of magistrates, sheriffs, and their deputies. Tradition informs us, that such a Legislative body found it easy to seize the sheriffalty and to attach it to their own office, or to secure it by way of an indirect compensation for their services, so indirect as not to disqualify them from being eligible to the office of Legislators. In this way they dispense justice for nothing! In this way they compensate themselves! Thus, too, the sheriffs are irresponsible to the people, and this has been a grievance at least from the days of Patrick Henry, who gives them the following admirable character in one of his speeches in the Convention which ratified the Federal Constitution. "Our State sheriffs," says he, "those unfeeling blood-suckers, have under the watchful eye of the Legislature, committed the most horrid and barbarous ravages upon our people. It has required the constant vigilance of the Legislature, to keep them from totally ruining the people. A repeated succession of laws has been made to suppress their iniquitous speculations and cruel extortions, and as often has their nefarious ingenuity devised methods of evading these laws." Such was the character of the sheriffs in those days, in the opinion of one of Virginia's most distinguished men. It must often be so, when public functionaries are not responsible to the people.

But we love a cheap magistracy, and the justices serve for nothing! It is true, they only divide among them, between 50 and 60,000 dollars per annum, in the way of sheriffs' fees. Valuing the one hundred and five sheriffalties in this Commonwealth at 500 dollars per annum, we can easily estimate what serving for *nothing* means, when applied to our present system. They are paid in the most exceptionable way, and it is all one and the same, whether they receive the amount of the sheriffalty in succession, or divide it annually amongst them according to their services; it is still *in principle* a compensation, and the office of justice is so far *lucrative*.

But, some gentlemen tell us, of the immense expense to be incurred, by changing the present system. It has been said by one gentleman, (Mr. Giles,) that if the magistrates were to be paid only 200 dollars annually, it would surpass the whole revenue of the State. And this is to affright us from a change of the system. But if the justices of Virginia are so high-minded as to serve for nothing under the present system, why might they not, if found expedient, serve under another system!!

I had intended, to take some notice of the *incompetency* of these tribunals to render satisfaction to the community, in the discharge of so many duties, for which in many parts of the country they are so illy qualified. But in this, I have been preceded and anticipated, by the gentleman from Loudoun, (Mr. Henderson,) who has gone so fully into the details. I feel rather disposed to examine their claims to Constitutional consecration upon principle, but I confess, I cannot find a good reason, why they should not be committed wholly to Legislative jurisdiction and management. To the principle on which the County Court system is now built, I have insuperable objections. It is at variance with all principle and precedent in these United States.

Time was, when Montesquieu was considered as high authority in matters of this sort; and what does Montesquieu say of the principle on which our County Courts are founded? His words are, "In a Republic, if any body of magistracy, have the power of *filling vacancies* occurring in their own body, or of appointing their own successors; if they once become corrupt, which in all probability will be the case, the evil will become *incurable*, because corrupt men will appoint *corrupt successors*." Is this true or is it false? Is it entitled to no weight; to no consideration on this question? I think it is. If, let me ask, one body of Judges may appoint their own successors, why may not another body? Why not then permit the Judges of the Inferior Courts, of the Court of Appeals, to appoint their own successors? Certainly they are as competent as the judges of the County Courts! I might here appeal to; nay, I might ask the venerable gentleman from Richmond, the Chief Justice of these United States, would he, with all his wisdom and experience, undertake to appoint his successor? and if not, would he sanction and consecrate this principle and this practice, in any other body of Judges?

But some gentlemen eulogize these tribunals and the whole system as the wisest in the world. One thing only is wanting to give them the highest dignity, and to entitle them to the unqualified approbation of some, and that would seem to be, to invest them with the power of filling all vacancies in the Legislative Assemblies; to give them the right to elect all our Representatives. This they virtually do in some instances already, by the *exclusive* privileges which they now possess. But to invest them with this exclusive privilege, would prevent those tumults and cabals attendant on elections, and thus give perfect peace to the Commonwealth!

But, I have yet to learn, why the corporate towns in this Commonwealth, Richmond, Petersburg, Norfolk, &c. can elect their magistrates, who are at least as well qualified judges as any in the Commonwealth, and why the counties of Ohio, and Brooke, and other counties in the State cannot do the same? The only relevant rea-

sons which I have as yet heard assigned, why the Legislature should elect the Judges of the supreme tribunals, is, because the people do not always, cannot always, know the claims of the aspirants or candidates. If this be good logic or good sense, it will prove that the counties ought to elect their own magistrates, because they can know them better than any persons living out of the counties; and the recommendation of a whole ward of qualified voters, is better evidence to the chief Executive of their competency, than is the recommendation of a few, *perhaps* interested magistrates. I am for reposing the greatest confidence in the people. The power is safely lodged in their hands; more safely, I am sure, than in a few privileged ones, whom they never appointed their *trustees*.

The virtue of the people, and not the goodness of the system, has hitherto prevented that corruption to which many of our institutions tend. But, if that deterioration of the public morals which the gentleman from Chesterfield has assured us is advancing with such appalling rapidity, in a few years the County Court system will become an intolerable grievance.

I am not an enemy to County Courts, but I wish to leave them in the power, and subject to the wisdom of legislation. I do not wish to bind them irrevocably and unalterably upon posterity by Constitutional provision. If they are so wise and so useful, as gentlemen suppose, they need not fear the Legislative power.

But, why we should only establish the *principle* of a Court of Appeals and of such other Inferior Courts as the Legislature may ordain and establish, and bind by the definite article *the*, the present County Courts upon the people, is to me unaccountable, except upon one principle, and that is because so many complaints have been made against them. Why should the article *the* precede County Courts, and the others be spoken of indefinitely? Thus the Legislature is debarred from touching them! For, if such an attempt should be made, some ten or twenty years hence, would it not be argued that the phrase "*the County Courts*," just imported such County Courts so organized and so constituted as those existing at this day. A Court of Appeals will admit of Legislative provision, but *the* County Courts will not. I hope gentlemen will perceive the impropriety of this phraseology, and correct it, if they wish the Legislature ever to take these courts into examination.

I could produce many testimonies against them, were I to follow the example of gentlemen who defend them; but I prefer examining their merits or demerits upon principle; and, I doubt not, if we were fully acquainted with the whole history of them, they will be found no better in practice than in principle. From the information I have received, I can hazard nothing in saying that I am of opinion that at least four-fifths of the magistrates in Western Virginia, would wish to see the present system subjected to Legislative jurisdiction. I do therefore hope, that we will commit them wholly to Legislative controul and management, which can best adapt them to the ever-changing exigencies of society.

The question was now taken on striking out the clause, and decided in the negative—Ayes 22.

So the Committee refused to strike out the words "and in the County Courts," from the resolution declaring in what courts the Judicial power of Virginia shall reside.

Mr. Campbell now moved (in consequence of an alleged suggestion of the venerable gentleman from Richmond, Mr. Marshall,) to strike out the word "*the*" before "County Courts," so as to let the clause read "and in County Courts."

Mr. Marshall thought this could do no harm, and if it tended to reconcile any gentleman to the resolution, it had better be adopted.

Mr. Randolph wished to hear what good it would do.

Mr. Henderson replied, that if the word should be retained, the Legislature might consider themselves as withheld from any alteration in the organization of these courts; if it was removed, that doubt would be removed.

Mr. Coalter said, if the amendment was to have no effect, he did not object to it; but if it was to give the Legislature power to organize the County Courts, so as to assign them pay and put them on the civil list, he should be against it.

Mr. Mercer was astonished to hear a doubt on that subject: the Legislature had at present power to assign pay to the magistrates, if they pleased.

Mr. Coalter said, the Constitution contained no power to that effect.

Mr. Morgan, in reply to Judge Coalter, said he had always understood, that by a true construction of the Constitution, the Legislature has full authority to allow justices of the peace any compensation whatever. There can be no doubt, as no part of the Constitution prohibits it. By one clause, justices are authorised to sit in either House of Assembly; but by another, the disqualifying clause, every person holding any *lucrative office* is disqualified from sitting in the Legislature. Thus, if they be allowed either fees, or a salary for their services, they cannot sit in either House under this last clause; the fees or salary, making the office a *lucrative* one. They have the whole subject of compensation under their own controul, and in their own hands.

But they prefer sitting in the Assembly, and wielding their counties at home, as has well been said by others, to any fees or salary whatever.

The question was now taken on Mr. Campbell's motion, and carried—Ayes 48, Noes 42.

(Messrs. Madison, Monroe and Marshall, voting in the affirmative.)

So the Committee resolved that the clause shall read:

"Resolved, That the Judicial power shall be vested in a Court of Appeals, in such Inferior Courts as the Legislature shall from time to time ordain and establish, and in County Courts."

The Committee then rose, and the House adjourned.

WEDNESDAY, DECEMBER 2, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Sykes of the Methodist Church.

The House then went into Committee of the Whole, Mr. Stanard in the Chair, and the question being on the first resolution in the report of the Judiciary Committee:

Mr. Marshall said, there were some additional provisions he wished to have introduced into the resolution, and which he had not yet suggested. The resolution professes to enumerate all the depositories of the Judicial power of the Commonwealth; and, therefore, all intended to be included must be enumerated. Justices of the peace when not upon the bench, but acting singly, exercise an important portion of the Judicial power. The trial of warrants was a considerable part of the Judicial power of the Commonwealth. He, therefore, moved to amend the resolution by adding the following clause after the words "County Courts:—"

In the third line of the first resolution of the Judiciary Committee, strike out the word "and"—and secondly, at the end of the same line insert "and in the justices of the peace who shall compose the said courts."

The amendment was agreed to.

Mr. Marshall then proposed to add still farther to the enumeration. Corporation Courts constituted a necessary part of the Judicial system, and should not be omitted. He at first proposed to insert the amendment after the words "County Courts," but some gentlemen whom he had consulted, felt apprehensive that such a location might render these Corporation Courts, Constitutional tribunals; and though he had no such apprehension himself, for caution sake, he would not propose to insert them there, but so introduce the amendment, that it should be impossible to consider them as courts Constitutionally established. He then moved the following:

"The Legislature may also vest such jurisdiction as shall be deemed necessary in Corporation Courts, and in the magistrates who may belong to the Corporate body."

This amendment was also agreed to.

Mr. Mercer having moved that the report of the Judiciary Committee, which had now been gone through, be laid aside, and that the Committee proceed to consider the report of the Legislative Committee.

Mr. Powell said, that it would be recollected by a vote taken yesterday, the Committee had agreed to strike out the word "*the*" before the words "*County Courts*," in the first resolution of the Judiciary Committee. Mr. P. said, that he had been one of those who voted in the affirmative on that question, but he was now free to confess, that he had given that vote under a total mistake, as to what would be the effect of striking out the word, and his object in rising at this time was to move a *re-consideration*. He had been confirmed in his opinion, by the view which had been taken by the gentleman from Richmond, (Mr. Marshall,) that the effect would be to abrogate the provision in the existing Constitution; and if the present resolution should be adopted, and the word "*the*" be stricken therefrom, what would be the necessary effect? The effect must be, that the Legislature would be required forthwith to build up anew the County Court system, with whatever power or jurisdiction attached to it, that body might deem it proper to confer. Now, he was well satisfied, that this had not been the object desired by most of those who had voted in favour of striking out the word "*the*." Mr. P. said, that while he was desirous to preserve the system of the County Courts, and to vest in the Legislature, a power to correct the existing evils of that system, it was by no means his wish to impose upon the Legislature, the duty of building up an entire system from the foundation. If the word "*the*" should be retained, then the County Courts would be retained in their present organization, the Legislature having power to alter and regulate the jurisdiction of those courts as they might see proper. It was true, that that body might choose to retain the system

as it now existed, with its present jurisdiction unaltered; but it was also true that they might do otherwise. He hoped the motion would be re-considered.

Mr. Randolph said, that he hoped and trusted that the Committee would re-consider. He had never been more surprised in his life than on yesterday, when after the very slender vote their exertions had enabled them to obtain, he found *instantly*, a sudden change produced by the adoption of an amendment, which, to put the most fair construction upon it, was equivalent to striking out the whole of that, which the Committee had determined to retain, and which was susceptible of a construction still more hostile to the existing system. Mr. R. said, that he did not know any other thing which could have induced him, in the present pitiable condition of his frame, to throw himself upon the attention of the Committee. He had long considered the County Court system, and the freehold Suffrage, as the two main pillars in the ancient edifice of our State Constitution. In the course of my life I have repeatedly been called upon by various eminent men, to explain to them the system of Government in this Commonwealth; and I never knew a single individual of the number, who was not struck with admiration at the structure of our County Court system. I have been asked, whether it was the effect of design, or of one of those fortunate combinations of circumstances, which enabled its framers to "snatch a grace beyond the reach of art." Whether it was design or chance, one thing is certain, that the plan has proved in practice, to be one of the very best which the wit of man could have devised for this Commonwealth; preserving in the happiest manner, a just administration of our affairs, between the instability attendant upon popular elections, and the corruption or oppression of Executive patronage. It insures to us, that the power of the Commonwealth will always be in the hands of good and lawful men. I never met an individual who cursed the appointment of Jackson, or a Federalist, when Federalism was uppermost, or a Republican, when it was downmost, who did not express envy at this feature of our polity. Virginia stands between Scylla and Charybdis. We must have magistrates appointed by the people or by the Executive, (unless the present mode be continued.) Suppose by the people. Then, in a cause between a man of great influence, popularity, and power—and a poor man,—he that is poor will have no chance of justice. If they are appointed by the Executive, it must be by recommendation:—but of what sort? Such as prevails at Washington? (thank God no man ever dared to approach me, for my name to one of them,) recommendations obtained by cabal and intrigue?—and after all—you must be doomed to instability—yes, to utter instability. At present the Government of each county, is in, hands best fitted for it. The gentleman from Chesterfield, in enumerating so ably and clearly the Herculean labours of their office, has truly said, that they step in between the accused and the Commonwealth in all cases, where the crime is not so great as to be sent on to the higher courts. Their mode of appointment may be an anomaly—but I consider it the most valuable feature of the system.

If we abandon this, we must resort to infamous jobbers and trading justices; who will foment instead of allaying village quarrels. If you will strike the pettifogger out of existence, you shall have my vote most heartily. It can be done thus alone. But there are some (I speak, of course, of those *out* of this House,) who delight to excite clamour—who long to suck blood—and raise popular commotion;—who want to be Judges and justices, because the people refuse them a livelihood as lawyers. I was pained and surprised at the description given, by the gentleman from Loudoun, of drunken justices. I had thought there were none of such a description; but the testimony is given by a respectable gentleman—and in his county, the fact must be so. I bless God it is so no where else. Our justices are not so ignorant as he imagines—my confidence is infinitely greater in County Courts than in the Superior Courts. The bench of the latter is filled too often by lawyers—who can't get a livelihood at the bar. I speak not of Judges in general. But the gentleman says, that when he wants a pair of boots, he goes to a skilful boot-maker: but, Sir, when I want either boots or a Constitution, I will go to capable workmen, and not to cobblers.

Great stress has been laid on the opinion of Mr. Jefferson, by a gentleman not now in his place. Sir, the opinion of Mr. Jefferson comes strangely from him. He has gone beyond the Ganges into the uttermost East. But I have no hesitation to say, that on a subject like this, I have not much deference for the opinion of Mr. Jefferson. We all know he was very confident in his theories—but I am a practical man and have no confidence *a priori* in the theories of Mr. Jefferson, or of any other man under the sun.

Not an argument has been advanced against County Courts, but would be equally good *a priori* against jury-trial. What could have taught us its value, but experience? *A priori*, it seems absurd to trust a dozen ploughmen—good and lawful of the vicinage I grant, but still ploughmen—with a point of law in criminal cases, without appeal—and in civil cases under circumstances almost equivalent. We can hardly conceive any thing more ridiculous in theory—yet we find none half so valuable in practice:—So vain is it to argue against fact. I once witnessed a contest of

argument against fact; and if it will relieve the oppression and ennui of this debate, I will relate it: I saw one of the best and worthiest men on a visit at some distance from home, urging his lady to make preparation to ride, for "the Sun was down"—His lady said, "the Sun was not down." Her lord gravely replied, "the Sun sets at half past six: it is now past that time." (Every man's watch is right and his was in his hand.) The company looked out of the window and saw the Sun in all his blaze of glory—but the Sun ought to have been down, as fleas ought to have been lobsters. The Sun, however, was not down, and fleas are not lobsters: whether it be because they have not souls, I leave to St. Jerome and the Bishops to settle.

We are not to be struck down by the authority of Mr. Jefferson. Sir, if there be any point in which the authority of Mr. Jefferson might be considered as valid, it is in the mechanism of a plough. He once mathematically and geometrically demonstrated the form of a mould-board which should present the least resistance: his mould-board was sent to Paris, to the *Savants*—it was exhibited to all the visitors at the Garden of Plants. The *Savants* all declared *una voce* that this was the best mould-board that had ever been devised. They did not decree to Mr. Jefferson the honors of *Hermes Trismegistus*, but they cast his mould-board in plaster; and there it remains an eternal proof, that this form of mould-board presents less resistance than any other on the face of the earth. Some time after, an adversary brought into Virginia the Carey plough; but it was such an awkward ill-looking thing, that it would not sell: at length some one tried it, and though its mould-board was not that of least resistance, it beat Mr. Jefferson's plough as much as common sense will always beat theory and reveries. Now there is not in Virginia, I believe, one plough with the *mould-board of least resistance*. I have had some experience in its use, and find it the handsomest plough to draw I ever saw. So much for authority!

Sir, when we shall have given up County Courts, and jury-trial, and Freehold Suffrage, there will be nothing in the Commonwealth worth attention to any one of practical sense. The County Courts hold the just balance between popular mutability, (the opprobrium and danger of all popular systems) on the one hand, and Executive patronage, on the other. I said before that there must be recommendation of some sort. Quære then, which is better? that it shall be made openly by the justices when assembled, on notice, or by a private letter? Sir, I am for a strict adherence to the anchorage ground of the Constitution: it has hitherto kept the Commonwealth from swinging from its moorings: when it shall drag its anchors, or slip its cable, God knows what will become of the vessel of State. But my hand may not be wanting at the plough. If gentlemen succeed in introducing the newest, theoretical, pure, defecated Jacobinism into this Commonwealth, I do upon my soul believe, they will have inflicted a deeper wound on Republican Government, than it ever experienced before.

I wish I could have presented my thoughts in a manner more worthy of the subject and the occasion. The gentleman who has aspired to out-act Cæsar in the Capitol, folds himself in his robe, and exclaims *et tu Brute!*

Mr. Marshall said, he could assure the gentleman from Charlotte, that that gentleman was not a greater friend to the County Courts than he was, nor was he a greater friend to the mode in which the justices are now appointed than he; and whenever the Committee should reach that part of the report which applied to this particular question, the gentleman would find him following in his track, not closely perhaps, but at some distance, yet certainly following. He was disposed to make a great sacrifice to secure that object.

He would now call the attention of the Committee to the fifth resolution of the report, and which he trusted would be suffered to remain in it. It disposed of the subject the gentleman from Charlotte appeared to be so much concerned about. [Here Mr. M. read the fifth resolution in the following words: "*Resolved*, That on the creation of any new county, justices of the peace shall be appointed in the first instance as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase their number, appointments shall be made by the Governor, by and with the advice and consent of the Senate, on the recommendation of their respective County Courts."]

If the Convention should leave to the Governor an Executive Council, then he was ready to say, let the appointment of justices be made by the Governor, by and with the advice of the Council, as is now provided by the Constitution. But, if it should be contrary to the will of the Convention that a Council be retained, then let the appointment be made with the advice of the Senate, on the recommendation of the County Court. It was his purpose to offer an amendment, which would give still more importance to the recommendation of the County Court. He would not suggest it at present, but he should most certainly so endeavor. He did not differ from the gentleman in his views of the County Courts. He did not, however, suppose it to be necessary to re-instate the article "*the*" in order to effect all that gentleman wished, and which he wished as strongly as the gentleman. When the word

was stricken out, it was apprehended that the effect might be to have some new court constituted and called "a County Court," and which might displace *the* County Courts as at present established. Mr. M. said, he should be dissatisfied with such a change; but he did not apprehend it could result from omitting the article. The amendment which had been adopted rendered such a thing impossible. It directed that the justices of the peace should constitute the County Courts; and if so, what was there to fear? He perceived nothing. But with respect to the County Courts as now established, and the mode of their appointment, there was not a member of the Convention more strongly disposed to retain them than he.

Mr. Randolph rose to supply the omission of a fact which he had intended to state when last up, which was, that he never had been, was not then, and never should be, a magistrate; nor was there a magistrate connected with him by blood or marriage, within his own county, or as far as he knew, any where else.

Mr. Marshall said, that he hoped he had not been considered as insinuating any such motive as having actuated the gentleman from Charlotte. It would really give him more pain than he could express. No person could be more fully satisfied that that gentleman uttered his own opinions, and that what he said flowed from him in a manner the most spontaneous and impartial.

Mr. Randolph replied, that it was impossible that what he had now stated could have had the remotest connexion with the remarks of the distinguished gentleman from Richmond, because he had intended to have said it when up before, and had omitted to do so only through inadvertence: that gentleman was the last man in the world that he could suspect of intending to make any injurious insinuations whatever. He knew that like my uncle Toby "he would not hurt a fly."

Mr. Powell said, that he should not attempt, because he felt himself to be unqualified, to oppose the interpretation which had been put upon the amendment by the venerable gentleman from Richmond; and if he could have satisfied his mind, that it would have the effect that gentleman supposed, he should cheerfully have withdrawn his motion for a re-consideration. He attributed it to the obtuseness of his own intellect, that he was unable to subscribe to the opinion which the gentleman had expressed; but he could not still help believing, that if the effect of the present resolution would be, to abrogate so much of the existing Constitution as applied to this subject, so that the Constitution would stand as if it contained no such clause at all, and in place of it the naked resolution of the Committee was to be substituted, the effect would be to vest a portion of the Judicial power in a County Court; of course, all the laws resting on the present clause in the Constitution, must fall with it. They could not operate with respect to a principle, now first proposed. This resolution, then, was to be a substitute for, and an abrogation of, the existing provision in the Constitution. The Legislature would consequently have to create the duties and to define the jurisdiction of the County Courts. If his view was correct, the result would be, to impose that duty upon the Legislature. They must define by law, all the powers and all the duties of the new County Courts. He had before admitted, that it was possible that they might re-enact the present system just as it stood, but they might also determine otherwise, and he for one, did not choose to entrust them with that power. He had fears, that the Legislature might go beyond a mere pruning away of the excrescences of the present County Court system. He wished to give them power to do no more than to correct the abuses of that system—would the amendment of the gentleman from Richmond have that effect? The amendment only said, that the magistrates of which it spoke should constitute the County Court. But what County Court? It did not say what sort of a County Court it should be. Now, he thought that the Legislature would be bound to supply this omission by regulating the whole subject. Mr. P. however, concluded by acknowledging that he felt inclined to distrust his own opinion, because he found that it differed from that of a venerable gentleman for whose personal character, as well as exalted station, he felt the highest reverence.

Mr. Leigh said, that if his good and great friend would give him his attention for a moment, he thought he could satisfy him of the importance of re-inserting the word "*the*" in the clause, which had been referred to. As the proposition now stood; since that word had been stricken out, the whole amount of what was provided was, that the Judicial power of the Commonwealth should be vested in a Court of Appeals, in the Inferior Courts, and in County Courts generally. The effect would have been, that the Legislature would have been at liberty to ordain County Courts, held by pettifoggers, with a salary of \$200; with an enormous expense to the public, and to the great injury of the suitors. It would have enabled the Legislature to have constituted those very tribunals, which he and his friend held in the most abhorrence, but which some other gentlemen seemed so earnestly to desire. That danger, indeed, was now taken away in some measure by the amendment, which had been adopted. In that respect, the existing system was pursued, but it was pursued only in that particular. What had been the object of the Legislative Committee? It certainly had been

to preserve the existing system of our County Courts, leaving to the Legislature no other power in respect to them, but to modify their jurisdiction. But, if the word "*the*" should not be inserted, the effect would be precisely that which had been described by the gentleman from Frederick, (Mr. Powell.) It secured nothing more, than that the State should have County Courts of some kind, and that these should consist of justices of the peace. But still, *the* existing County Courts would not be preserved or continued. Not only would the County Court law have to be re-enacted, but there was hardly a statute in relation to the Executive authority of the State, and not one in reference to its police, but must be re-enacted also; and every man must know, that to re-build the entire system, would be an immense undertaking. Whole bodies of law must be subjected to alterations, and years would be required to reinstate what it had taken two hundred years to perfect, and which had employed the wisdom of their ancestors from the foundation of the Colony to the present time. The effect would be, not to preserve the County Courts as they were, but to oblige the Legislature to re-enact and to revise every statute relating to them.

But should this not be the effect, and his apprehension unfounded, (for, he had found that the high degree of alarm he had felt and expressed on this subject, appeared to many gentlemen like insanity,) what course did it behove the wisdom of the gentleman from Richmond to take? That gentleman had told the Committee, that he considered it as of no importance whether the word *the* was there or not—that it did neither good nor harm. If so, he asked that the gentleman, if only out of deference to those who thought the word of importance, would consent to let it be restored. If he thought the word could do no evil, he hoped he would restore it, out of regard to their real and sincere apprehensions of the effect of its omission.

Mr. Henderson in reply to Mr. Randolph said, that he understood that gentleman to have accused him of imputing to the magistracy of his own county a greater degree of incompetency, than belonged to those of other counties similarly situated. He disclaimed any such intention, and thought that he had used no language which would justify it. The gentleman from Charlotte had charged his remarks with a want of decorum. He was free to own that a want of training, as well as of other qualifications, which were requisite to sustain his character in that House, subjected him to just criticism. But he did not owe that acknowledgment to the gentleman from Charlotte—and from the sample which the House had witnessed to-day, he should feel inclined to take some other model for imitation when he wished to improve his manners.

Mr. Johnson said, that he had voted to strike out the word "*the*" before "County Courts." He had done so from deference to the opinion of the gentleman from Richmond, (Mr. Marshall,) and from a persuasion that to retain it, would operate in a manner that might trammel the Legislature, (though he knew that no such intention was entertained by those who inserted it.) He had yielded the more readily, because the subject had been gravely considered in the Judicial Committee; whereas, he had not himself given it any close examination, except during the very short period in which it had been discussed in Committee of the Whole. He was now satisfied that he had done wrong—and that in voting to strike out the word, he had not done that which was required from him, to maintain the doctrines he had always vindicated there and elsewhere. It had not been to a County Court that he was attached; for a court organized in any manner and called a *County Court* he felt no particular reverence. He had been endeavouring to vindicate *the* County Court system—a system long known to Virginians by its Constitutionality and its practicability. It was this system which he had thought so beneficial. It was that County Court, which was composed of justices of the peace with power to recommend their successors, and which participated so essentially in the Executive Department of Government—it was that identical County Court, which he wished to see recognized in the proposed Constitution. Though he was not clear that striking out the word *the* would hazard this, yet restoring it would clearly declare the intention of this body in that behalf. The County Courts, he confessed, were his favourites—and he did not think that the Legislative discretion could be restrained, if once entrusted with the subject, because that discretion would follow the declaration which preceded, viz: that the jurisdiction of all the courts was to be regulated by the Legislature. A fair construction of this clause would not restrain that body. The Legislature might say that the Constitution meant the courts to meet monthly, or once in two months, or in three, or in four months; that it meant the court to consist of but three or four members, &c. All was completely in the power of the Legislature. If any gentleman feared that retaining the word would too much trammel this discretion, let them introduce a guarded article to prevent it. But let it be *the* County Courts that we recognize. He should vote in favour of re-considering the decision of yesterday and re-instating the word.

The question of re-consideration was now put, and decided in the affirmative—Ayes 53, Noes 41.

Mr. Upshur said, he would trouble the Committee with but a few remarks. He had voted for a re-consideration, and it was due to himself that he should make his course in this matter understood. He should vote against re-instating the word "the" for reasons which he would now briefly state. It had been said that the Convention by retaining that word, would shew its determination to retain the County Courts as now organized in every respect: not only to preserve some of the forms of the present system, but the County Courts, with all and every incident pertaining to them; and the objection to this was, that the vote would bind the Convention to take those courts, not only with all their present jurisdiction, but also with the present mode of appointing the justices who were to compose them; what course he might take, was questionable. He had listened with attention to the observations on both sides, but he could not fully agree with either. He thought in the main, that these courts were the most useful of all the branches of the Judiciary system, but he was willing that all modes of appointing justices should be proposed. If any one of them was better than that now in use, Mr. U. was ready to vote for it; but, unless it were better, he should of course prefer to retain the present mode. He should now vote with a view to leave that point open. Gentlemen seemed to imagine, that if they did not adopt the whole system, they would leave it in the power of the Legislature, to organize under the name of a County Court any sort of tribunal they pleased. This might be true, if the vote now given were final; but they were now sitting, not in Convention, but in Committee of the Whole, and deliberating on the proper shape to be given to the several Judicial tribunals of the Commonwealth. The vote now to be taken would not deprive them of the power of hereafter adopting either the present mode of appointing justices, or some other instead of it, as the Convention might prefer. The subject would still be left open; they would not be concluded by their present act. If they voted against re-instating the word now, the resolution without it would only form a part of that Constitution, on each article of which they would hereafter have to pass. They would only have determined that a part of the Judicial power of the State should be vested in County Courts, and in justices of the peace. Who were these to be? Persons appointed under the Constitution which they should erect. And how appointed? As that Constitution might direct. They could provide that the justices should be appointed in one mode, or in another mode. Would they be at all precluded from devising some other scheme? Not at all. This view of the matter was with him conclusive. He was for letting gentlemen have an opportunity of submitting their various schemes for some better mode. If after these had been considered, the present plan should at last be found preferable to all others, they could at the latest hour go back and adopt it.

But what would be the consequence of the opposite vote? The entire system must be retained precisely in its present form. If the whole must not be retained, then his argument was good for nothing; but, if it must, they were now making a final determination, and though a thousand schemes, however judicious, should be proposed, with a view to check and controul abuses now complained of, the Convention would be precluded from considering any one of them.

The difficulty suggested by the gentleman from Chesterfield, did not weigh much with him; there would be no necessity for re-enacting all those laws of which he spoke. Let the justices of the peace be appointed under the same title, and the County Courts be established under the same designation as at present. The one would then take the place of the other, and the laws would apply to them just as they did at present; or if this were doubtful, what could be easier than to cause them to do so by a provision of the Constitution? He saw no difficulty in the case. The vote had been given on the idea (he would not say entertained by himself,) that retaining the word "the" precluded them from amending the mode of appointing justices. If it did not, they were still left free. Why adhere to this precise phraseology, while it did produce the most serious doubt? There were many members who would vote to strike out the system altogether, rather than allow magistrates to be appointed as they now are. Mr. U. said, he was not one of these, but he had an anxious desire to give gentlemen an opportunity of submitting their plans. For himself, he believed that nine out of ten would find the present plan best. He confessed that he was unable to see a better. He felt but little respect for theories, and had little doubt that the existing system would be retained. But why preclude members from offering their schemes? He did not wish to shut the door upon enquiry. Should any plan be offered, the theory of which he might approve, and which he believed would not prove injurious in practice, he should be disposed to go with it. But if retaining the word "the" would leave open the question as to the appointment of justices, he should not care a farthing which way the vote went.

The Chair here observed, that the consideration of the fifth resolution would open that point.

Mr. Upshur said, he had so understood it. What, then, could be the use of retaining the word "the"?

Mr. Johnson said, he would shew the gentleman what was the use of retaining. Re-instating the word would not preclude any subsequent amendments. If the Committee chose to say, that justices of the peace should be appointed at the will of the Governor, or should be elected by wards, or should be appointed on the recommendation of the County Courts, by and with the consent of the Senate, it was surely competent to them to do so. But, he was for re-instating the word "*the*," because the striking of it out went to destroy the indication they had given as to the tribunal they intended to erect. When the Constitution said, *the* County Courts; to what could it be supposed to refer? To the County Courts of Kentucky? To the County Courts of Maryland? Or, must it not refer to the County Courts of Virginia, as known to them at the time the Constitution was adopted? He understood the Committee as having said, that in these, a part of the Judicial power should be vested. But how? Precisely in all respects as at present? No. If they adopted that resolution alone, all the essential characteristics of the County Courts would be retained. But, might they not say, that power should be vested in the County Courts, but that their organization should be varied in such and such particulars? Surely, there was no inconsistency between these two. The general provision would have reference to a well-known subject, while the subsequent clause went to qualify the generality. The Convention would declare, that the County Courts of Virginia should be such as they now were, save in such respects as they chose to modify them. The gentleman from Northampton thought with them, and ought to vote with them. He need not discard the word "*the*," for fear the Convention should control themselves. Any qualifications of the general proposition, would be considered on their own merits. Let it be remembered, that the County Courts were not the creatures of this body, but had subsisted in Virginia long before it came into existence; and though the institution was not now erected in terms, it was referred to as already in existence. There could be no difficulty, either in understanding the clause, or in practising under it. The power of the Legislature would not be controlled or restricted, but would be fully and legitimately exercised. These courts had been organized since '76. Should the Constitution refer to them as *the* County Courts, it would refer to them as they had existed at the time of its adoption: and it would leave to the Legislature full power to act on the subject. Mr. J. concluded, by declaring his intention to vote against any qualification of the existing system.

The question being at length taken on striking out the word "*the*," before the words "*County Courts*," it was decided in the negative.—Ayes 44, Noes 50.

So the word "*the*," was retained.

Messrs. Madison, Monroe and Marshall voting against striking out the word "*the*."

So the Committee resolved to retain the first resolution, in these words:

"The Judicial power shall be vested in a Court of Appeals, in such Inferior Courts as the Legislature shall from time to time ordain and establish, and in the County Courts."

Mr. Mercer now renewed his motion, to pass over the residue of the report of the Judiciary Committee, and expressed it as his desire, that the several propositions for compromise should be taken up, not as in the character of amendments, but as distinct substantive propositions.

After a desultory debate on points of order, this arrangement prevailed, and the Committee proceeded to consider the proposition offered by Mr. Upshur.

Mr. MADISON now rose and addressed the Chair: the members rushed from their seats, and crowded around him.

Although (says he) the actual posture of the subject before the Committee might admit a full survey of it, it is not my purpose, in rising, to enter into the wide field of discussion, which has called forth a display of intellectual resources and varied powers of eloquence, that any country might be proud of, and which I have witnessed with the highest gratification. Having been, for a very long period, withdrawn from any participation in proceedings of deliberative bodies, and under other disqualifications now, of which I am deeply sensible, though perhaps less sensible than others may perceive that I ought to be, I shall not attempt more than a few observations, which may suggest the views I have taken of the subject, and which will consume but little of the time of the Committee, now become precious. It is sufficiently obvious, that persons and property are the two great subjects on which Governments are to act; and that the rights of persons, and the rights of property, are the objects, for the protection of which Government was instituted. These rights cannot well be separated. The personal right to acquire property, which is a natural right, gives to property, when acquired, a right to protection, as a social right. The essence of Government is power; and power, lodged as it must be in human hands, will ever be liable to abuse. In monarchies, the interests and happiness of all may be sacrificed to the caprice and passions of a despot. In aristocracies, the rights and welfare of the many may be sacrificed to the pride and cupidity of the few. In republics, the great danger is, that the majority may not sufficiently respect the rights of the minority. Some

gentlemen, consulting the purity and generosity of their own minds, without adverting to the lessons of experience, would find a security against that danger, in our social feelings; in a respect for character; in the dictates of the monitor within; in the interests of individuals; in the aggregate interests of the community. But man is known to be a selfish, as well as a social being. Respect for character, though often a salutary restraint, is but too often overruled by other motives. When numbers of men act in a body, respect for character is often lost, just in proportion as it is necessary to control what is not right. We all know that conscience is not a sufficient safe-guard; and besides, that conscience itself may be deluded; may be misled, by an unconscious bias, into acts which an enlightened conscience would forbid. As to the permanent interest of individuals in the aggregate interests of the community, and in the proverbial maxim, that honesty is the best policy, present temptation is too often found to be an over-match for those considerations. These favourable attributes of the human character are all valuable, as auxiliaries; but they will not serve as a substitute for the coercive provisions belonging to Government and Law. They will always, in proportion as they prevail, be favourable to a mild administration of both: but they can never be relied on as a guaranty of the rights of the minority against a majority disposed to take unjust advantage of its power. The only effectual safe-guard to the rights of the minority, must be laid in such a basis and structure of the Government itself, as may afford, in a certain degree, directly or indirectly, a defensive authority in behalf of a minority having right on its side.

To come more nearly to the subject before the Committee, viz: that peculiar feature in our community, which calls for a peculiar division in the basis of our Government, I mean the coloured part of our population. It is apprehended, if the power of the Commonwealth shall be in the hands of a majority, who have no interest in this species of property, that, from the facility with which it may be oppressed by excessive taxation, injustice may be done to its owners. It would seem, therefore, if we can incorporate that interest into the basis of our system, it will be the most apposite and effectual security that can be devised. Such an arrangement is recommended to me by many very important considerations. It is due to justice; due to humanity; due to truth; to the sympathies of our nature; in fine, to our character as a people, both abroad and at home, that they should be considered, as much as possible, in the light of human beings, and not as mere property. As such, they are acted upon by our laws, and have an interest in our laws. They may be considered as making a part, though a degraded part, of the families to which they belong.

If they had the complexion of the Serfs in the North of Europe, or of the Villeins formerly in England; in other terms, if they were of our own complexion, much of the difficulty would be removed. But the mere circumstance of complexion cannot deprive them of the character of men. The Federal number, as it is called, is particularly recommended to attention in forming a basis of Representation, by its simplicity, its certainty, its stability, and its permanency. Other expedients for securing justice in the case of taxation, while they amount in pecuniary effect, to the same thing, have been found liable to great objections: and I do not believe that a majority of this Convention is disposed to adopt them, if they can find a substitute they can approve. Nor is it a small recommendation of the Federal number, in my view, that it is in conformity to the ratio recognized in the Federal Constitution. The cases, it is true, are not precisely the same, but there is more of analogy than might at first be supposed. If the coloured population were equally diffused through the State, the analogy would fail; but existing as it does, in large masses, in particular parts of it, the distinction between the different parts of the State, resembles that between the slave-holding and non-slave-holding States: and, if we reject a doctrine in our own State, whilst we claim the benefit of it in our relations to other States, other disagreeable consequences may be added to the charge of inconsistency, which will be brought against us. If the example of our sister States is to have weight, we find that in Georgia, the Federal number is made the basis of Representation in both branches of their Legislature: and I do not learn, that any dissatisfaction or inconvenience has flowed from its adoption. I wish we could know more of the manner in which particular organizations of Government operate in other parts of the United States. There would be less danger of being misled into error, and we should have the advantage of their experience, as well as our own. In the case I mention, there can, I believe, be no error.

Whether, therefore, we be fixing a basis of Representation, for the one branch or the other of our Legislature, or for both, in a combination with other principles, the Federal ratio is a favourite resource with me. It entered into my earliest views of the subject, before this Convention was assembled: and though I have kept my mind open, have listened to every proposition which has been advanced, and given to them all a candid consideration, I must say, that in my judgment, we shall act wisely in preferring it to others, which have been brought before us. Should the Federal number be made to enter into the basis in one branch of the Legislature, and not into the

other, such an arrangement might prove favourable to the slaves themselves. It may be, and I think it has been suggested, that those who have themselves no interest in this species of property, are apt to sympathise with the slaves, more than may be the case with their masters; and would, therefore, be disposed, when they had the ascendancy, to protect them from laws of an oppressive character, whilst the masters, who have a common interest with the slaves, against undue taxation, which must be paid out of their labour, will be their protectors when they have the ascendancy.

The Convention is now arrived at a point, where we must agree on some common ground, all sides relaxing in their opinions, not changing, but mutually surrendering a part of them. In framing a Constitution, great difficulties are necessarily to be overcome; and nothing can ever overcome them, but a spirit of compromise. Other nations are surprised at nothing so much as our having been able to form Constitutions in the manner which has been exemplified in this country. Even the union of so many States, is, in the eyes of the world, a wonder; the harmonious establishment of a common Government over them all, a miracle. I cannot but flatter myself, that without a miracle, we shall be able to arrange all difficulties. I never have despaired, notwithstanding all the threatening appearances we have passed through. I have now more than a hope—a consoling confidence, that we shall at last find, that our labours have not been in vain.

MR. UPSHUR then addressed the Chair, as follows:

MR. CHAIRMAN: I regret, that I have not been fortunate enough to hear any of the remarks of the venerable gentleman from Orange, (Mr. Madison.) The low voice in which he spoke, and the eager solicitude to hear him, which drew so many of the Committee around his person, deprived me of the profit which I could not have failed to derive from the lessons of his wisdom. For these reasons, I am unable to say what bearing his remarks were designed to have on the subject immediately before us; and of course, I am constrained to proceed with the development of my views, without regard to those remarks. In doing this, I shall carefully abstain from any laboured argument, convinced that in the present state of the discussion, no such argument can be necessary, even if it would be patiently endured. I will, therefore, content myself with a simple reference to the few explanatory remarks, with which I introduced these resolutions a few days ago, enlarging on them only so far as may be necessary to a full and correct understanding of the subject.

It must be evident to all, that I am contending for no peculiar principle. Our experience cannot have failed to admonish us, that no good can result from that array of parties, which, from the very commencement of our session, I have dreaded and deprecated. Nothing can now be done by a contest of strength. Argument is exhausted, and no hope can be cherished of a happy result to our labours, except in that spirit of conciliation, of which I trust every one of us feels the necessity. We all profess to have abandoned the idea of carrying our favorite measures, and to be seeking, in good faith, for some middle ground, on which we may meet and harmonize. Our only enquiry, therefore, is, where can this middle ground be found? Through what paths are we to seek it? Each party must be prepared to abandon something, in consideration of something to be abandoned to it in return. And these concessions, Sir, must not only be *mutual*, but they must be *equal* also. In this way, and in this way only, can we hope to rest the Constitution on the sure foundation of public confidence. It has been my most anxious desire, to attain this golden medium. How far I have succeeded, it is for the Committee now to determine.

We all know, Sir, that there are three distinct parties in this body. The first and most numerous, contends for the basis of white population; the second contends for the basis of white population and taxation combined; and the third contends for the basis of Federal numbers. Each party is entirely persuaded, that its principle is right, and each is desirous to carry its principle into both Houses of the General Assembly. Neither of them, however, is strong enough for this purpose; and all profess to be willing to depart in equal degree from their favourite principle. If so, Sir, it appears to my mind most evident, that our present office is merely one of numbers. Our object can be obtained by a simple arithmetical calculation, and that too, with absolute certainty. We have nothing to do, but to add together the results of the several ratios, and ascertain the fair average of all. This I have done. I have fixed the representation for the present time, and adopted the same principle as the rule for all time to come. This, Sir, is the true average of *principle*. I am willing to abide by it, whatever may be its effects upon the several interests of the Commonwealth. I believe, however—sincerely I believe, that of all the plans of compromise heretofore submitted, this is most favourable to our Western friends. Indulge me in a short comparison.

The scheme of the gentleman from Albemarle, (Mr. Gordon,) is founded on the Census of 1820: mine is founded on the Auditor's estimates for 1829. During this interval, the population of the West has increased much more rapidly than that of the East; and of course, the West would enjoy the advantage of this increase by my

scheme, and lose it by that of the gentleman from Albemarle. In the present apportionment of power, our plans result as follows:

For the House of Delegates—First District, or District West of the Alleghany:

Mr. Gordon's,	-	-	-	-	26 members.
The plan now before us,	-	-	-	-	26

Second, or Valley District:

Mr. Gordon's,	-	-	-	-	24
The plan now before us,	-	-	-	-	22

Third, or Middle District:

Mr. Gordon's,	-	-	-	-	37
The plan now before us,	-	-	-	-	38

Fourth, or Tide-Water District:

Mr. Gordon's,	-	-	-	-	33
The plan now before us,	-	-	-	-	34

Thus it appears, that according to the plan of the gentleman from Albemarle, the East will have a majority of twenty in the House of Delegates; and according to the plan now under consideration, it will have a majority of twenty-four. This difference, however, is much more than compensated to the West, in the Senate. According to the plan of the gentleman from Albemarle, the East will have a majority of four in a Senate of twenty-four: according to my plan, it will have a majority of *only* four in a Senate of thirty. In truth, Sir, I have given to the West a larger number in the Senate, than it can fairly claim upon my own principles. My reason was this: by an exact estimate, the first District would be entitled to six and a half, and I have given it seven; the second District would be entitled to five and a half, and I have given it six; the third District would be entitled to nine and a half, and I have given it nine; the fourth District would be entitled to eight and a half, and I have given it eight. Thus, I have taken from the East all the fractions to which it is entitled, while I have counted the same fractions as integers to the West. I trust that this will be received as some proof of friendly feeling, and a conciliatory temper, on the part of the East.

There is, however, a still more important difference between the gentleman from Albemarle and myself. He has provided no rule for future apportionments, whilst the rule proposed by me secures to the West all the advantage to be derived from her certain increase in every one of the elements of which that rule is composed. Indeed, Sir, the only doubt should be, not whether the *West*, but whether the *East*, ought to accept of my rule; for it is extremely obvious, that the East has every thing to lose, and little or nothing to gain, whilst the West has every thing to gain, and literally nothing to lose. Our tabular statements confirm the truth of this remark. Population in the East is nearly full. Our white population increases by a very inconsiderable ratio, whilst to the West, it increases with a rapidity which exceeds our most sanguine calculations. On this one of the three ratios, therefore, their advantage over us is manifest. In like manner, our taxation is probably as high as it will ever be; and if we ourselves are consulted, we shall scarcely desire an increase of political power, at the expense of an increase of taxation. Our population is nearly stationary; our agriculture shews us no wealth in the distance; our taxable subjects are as numerous as they will be for years, perhaps in all time to come. Not so with the West. As the people increase in numbers, their wealth will increase also. Their taxable subjects will multiply; and they will have also this advantage; that the increase of their taxes will be in exact proportion to the increase of their ability to pay. Even here, therefore, they have every reason to be satisfied. But, this is not all. Their white population, in which their increase is acknowledged to be most rapid, is twice counted to them. It is counted as a simple element; and it is again counted in combination with taxes. The same remarks apply to the third ratio, or Federal numbers. We have already as many slaves as our agriculture requires, and more than we find profitable. They will not, it is to be hoped, increase to any extent with us; but gentlemen themselves have assured us, that they are rapidly increasing to the West. They assured us of this, in order to allay our apprehensions of unjust taxation on that species of property. I offer them now the full benefit of their own calculations.

Gentlemen will perhaps reply that my rule works both ways; that while I hold out to them the prospect of advantage from multiplying these ratios, the East also enjoys the benefit of two of these ratios in a greater degree. This is undoubtedly true, so far as the present time is concerned. As the East would be benefitted by both the ratios of population and taxation combined, and of Federal numbers, she undoubtedly gains by bringing both these ratios, instead of one of them only, in connexion with another ratio which is adverse to her interests. But the gain is for the present time only, and gentlemen are at liberty to choose between a small comparative advantage *now*, and a double—nay, a four fold advantage in certain prospect; and that too, at no distant day. On this subject, however, gentlemen may consult their own views. I have

taken the average of three ratios instead of two, because I considered it most advantageous to the West, and because I was anxious to advance at once, to the ultimate point of concession. I will not, however, force upon gentlemen a benefit which they reject. I give them a *carte blanche*; they may strike from my three ratios any one they please. In this particular, the proposition of the gentleman from Chesterfield (Mr. Leigh) meets their ideas, and I have no hesitation myself, in adopting so much of that proposition, in lieu of this part of my own.

In regard to the proviso, Mr. Chairman, I have but a few words to say. I have no ultimatum as to the number of either House of the General Assembly. I must be permitted to declare, however, that a Senate of twenty-four is not, in my opinion, large enough for a territory so extensive as our own. If our Senators were chosen by electors, and those electors by the people, the number of the Senate would be a matter of comparative indifference. But we contemplate no such regulation. The people are to be alike the electors of both Houses, and it is therefore proper to establish such a proportion between the representative and the electoral body, as will enable each to know the other. We should place it in the power of the people to understand the character, and weigh justly, the pretensions of the candidate, and the services of the representative; and surely it is of the utmost importance that the representative should be well acquainted with the feelings, the wishes, and the interests of the people. This will be impossible, if the Senatorial Districts be too widely extended. This principle being preserved, I cheerfully surrender the details of my plan to the Committee.

Mr. Chairman, I have entered upon this delicate task, in the most accommodating spirit. So far as I am myself concerned, there are now before us two other plans of compromise, which I prefer to my own. My object is to settle this agitating contest upon just and fair principles—nay, Sir, upon *liberal* principles, and I have gone farther than I think could be properly required, in the hope of meeting the wishes of others. I consider this scheme highly favorable to the West; but if gentlemen think otherwise, I offer an alternative which will remove all just objections. If any just principle can be adopted, it must be manifest to all, that it ought to be carried into both Houses of the General Assembly. Upon such an organization, they would be much more apt to act harmoniously, than if they were organized upon opposite and antagonistic principles. I will not press this topic farther, because my present business is not to argue, but to explain. I am offering a scheme for *compromise*; a scheme which I humbly think, requires only to be understood, in order to be embraced. In adopting it, no party can be accused of conceding more than it receives in return. It is evident that a compromise which concedes only that which would have been obtained without it, or such as does not in the least weaken the powers retained, does not deserve the name. Such a compromise as will carry peace to the people, must be made by a *substantial* surrender on all sides; a surrender *for the sake of* peace, and one which shall appear to all, to be nearly if not exactly equal. Sir, I offer such a compromise to your acceptance, in the earnest hope that it will reconcile our conflicting claims, allay all the excitements of this dangerous contest, give a happy issue to our arduous labors, and enable us to return to our constituents with a well-founded hope, that we have merited their confidence and favor.

Mr. Moore of Rockbridge rose to say a few words in explanation of the course he intended to take. When he last addressed the Committee, he had expressed his disapprobation of a proposition offered by the gentleman from Loudoun, and since presented in substance by the gentleman from Goochland, being the same as had since been offered by the gentleman from Frederick (Mr. Cooke.) He had then been opposed to all compromise, and had so declared himself, because he believed that the East was not entitled to any representation of property as of right, nor as a protection, and because he was convinced that the principle of the white basis was laid down in the Bill of Rights. He had not changed his opinion: but he was willing to do now, what he had not been willing to do then.

However satisfied he might be of the rectitude of his own opinion, he considered that much was due to the opinions of those who were acting with him, and something also to the fears and prejudices of gentlemen on the other side: and a still weightier consideration with him was this; that his constituents were willing to make a sacrifice on the altar of peace. These considerations alone induced him to vote for any compromise. He was opposed to all the projects, and if he voted for any, it would be purely from a spirit of conciliation. Gentlemen had talked much of the unyielding spirit of the West, themselves being very willing to yield to a compromise; provided they may fix it at a point exactly to suit themselves. If a neighbor of his had long been in the unrightful possession of his farm, and he came to demand his own, the wrong does not offer him a compromise, but it would be to give up all that he owed him for the use of the property. A man stole his horse, and then offered to compromise, on condition that he would give up the horse and the saddle to boot. Just such a compromise he held the proposition of the gentleman from Fauquier, (Mr. Scott,)

of the gentleman from Northampton, (Mr. Upshur,) and of the gentleman from Culpeper, (Mr. Green.)

He was opposed to the proposition now before the Committee : when he first heard it, he was astonished that the gentleman proposed to give so large a number of Senators to the Western District, but when he came to find, that that number was made up by taking fractions from other districts, he found it to be the effect of force. He had been astonished to find, that the West was to get more by the plan of the gentleman from Northampton, who makes an average of three ratios, than by that of the gentleman from Chesterfield, who gives an average of two only.

Mr. Leigh explained. There was no discrepancy between them, except as to the number of the House of Delegates. Mr. L. allowed a greater ratio of increase in the West than in the East. This was the only difference between his plan and that of Mr. Marshall.

Mr. Moore replied, that let the difference arise as it might, both principles were such as he could never assent to. There was an objection, on the face of Mr. L's plan. It did not allow for an increase for the West, but it took care to provide, that let that increase be what it might, a majority might still remain East of the Ridge. Mr. M. now declared, that the only proposition he would ever assent to, was that of the Federal numbers in the Senate, and the white basis in the House of Delegates. He had voted against the mixed basis in the Senate, because he had been disposed to act in a fair spirit of compromise, but farther he would never go. Nor did he mean to be understood as pledging himself to go even thus far at the polls, when the Constitution should be voted for. He wished first to know the will of his constituents. The gentleman at the head of the Judiciary Committee (Mr. Marshall) had expressed his desire to vote for some proposition which would meet with the acceptance of the people of the Commonwealth. If that was the gentleman's wish, he hoped he would vote for the proposition of the gentleman from Frederick (Mr. Cooke;) for he could assure him that the people of the West never would adopt and never would submit to any such proposition as that of the gentleman from Chesterfield (Mr. Leigh,) and in his opinion they never ought to submit to it. The language of such a compromise was, meet us on the ground where we are willing to meet, or we will break up and do nothing. As to the proposition of the gentleman from Stafford (Mr. Coalter) it had quite too many *sine qua nons* in it : more by far than he had heard of since the treaty of Ghent. Some of them were *sine qua nons* with *him*. The gentleman had boasted of his Scotch-Irish blood ; there was some of that blood in his own veins, and he considered it at least equal to that of what had been called the old Virginia stock. It was blood which had been shed as freely in the cause of liberty ; the two had mingled in the hour of our revolution. The West was settled by the Wallaces, the Græmes, the Douglasses. Every man was with Bruce, save Sir John Cummine, and he was found under Edward's standard. He was sorry to see him there, and if the controversy must come to be settled at Bannockburn, they would all be there, and old Kirkpatrick among the rest. But it must be settled now. This question was not to be put off till next October ; it must be settled now or not at all.

MR. COOKE said, that he deeply lamented the course which the debate had taken, and the course which it seemed about to take. From my soul, said he, do I lament it.

I listened, Mr. Chairman, with respectful attention, to the exposition made by the gentleman from Northampton, of his plan of a compromise-basis of Representation in the Legislative bodies. And, had he deemed it necessary to consume a far greater portion of our time in the *explanation and developement* of his plan, I should have listened, not with patience only, but with pleasure. His plan is a *new* one, and therefore *requires* development : it proposes an amicable adjustment of a dangerous controversy, and therefore demands, from every lover of his country, a patient and respectful hearing.

But, Sir, I listened, I confess, with other feelings, with feelings not of impatience merely, but of heartfelt sorrow, to the angry declamation of the gentleman who followed him. I did conceive, Sir, that the flag of truce was flying aloft—that a suspension of hostilities had been proclaimed—I cherished the fond but delusive hope that the war was at an end. The hope was indeed delusive : for, while the white flag is still waving over our heads, the war has recommenced. In the midst of negotiation the cry of battle is raised. Our passions are sought to be inflamed by angry denunciations. We are told of blood that is to be shed, and of battles that are to be fought. To be fought between whom? To be fought between friends—countrymen—brethren !

Sir, the gentleman who has uttered these angry declamations, should have reflected that even between belligerent nations the flag of truce is held sacred—that we are actually engaged in negotiating a compromise—and that it is not *thus* that we are to bring our conflicting pretensions to an amicable adjustment. Deeply—deeply, do I lament the course he has pursued.

For myself, Mr. Chairman, I did suppose, that after a three weeks discussion had exhausted all the topics which belong to the subject of the apportionment of Representation, *further* debate of *any* sort was superfluous: and I did more especially suppose, that *polemical* debate, while plans of compromise were under consideration, would be in the highest degree pernicious. I took it for granted that the schemes of compromise proposed by the gentlemen from Northampton and Chesterfield, would be elaborately developed, fully explained, and then accepted or rejected by a silent vote. I deemed it an evil augury, then, when I heard the gentleman from Chesterfield remark, that these plans of compromise would give birth to "a strenuous debate."

What good purpose, I would ask him, can discussion occasion. The plans of compromise proposed by the gentlemen of the Middle, and Western country, by the member from Northampton, and by himself, involve no element of representation which is not fully understood by every member of the Committee. They involve topics too, I must be permitted to say, which have already elicited, and whose discussion will again stir up the angry passions of this excitable body. I implore the gentleman from Chesterfield to content himself with an *exposition* of his plan of compromise, offered, I believe, with a sincere view to the adjustment of the points in dispute, and to abandon, for the sake of peace, his expressed purpose of making them the subject of "a strenuous debate." I would say to that gentleman, in the words of his favourite author,

—*Incedis per ignes
Suppositos cineri doloso.*

I would warn him, that there are "fires concealed," under the "deceitful ashes," over which he rashly proposes to tread: That by pursuing the course he contemplates, he will kindle again the half-extinguished flames of discord, and run the risk of frustrating the object so dear to us all. I again entreat him to abandon his purpose of *debating* the proposition before us.

Let us have no more "strenuous debate," on *this* subject at least—let us express by our votes, our deliberate opinion as to their merits.

If, unhappily, it shall be found that we can agree on nothing, let us, at least, part in peace. Let us not inflame our imaginations and our passions, by declaiming about wars that are never to be waged, and about battles that are never to be fought.

MR. LEIGH said, that if the heart of the gentleman from Frederick, and his own could be examined, he believed they would be found more in unison than they appeared to be. The gentleman, said Mr. L., tells us of the flag of truce that is waving over our heads, and of some negotiation in which we are engaged. If there be such a flag, I have not yet seen its white colours. If a negotiation is going on, I am not among those who have been admitted to take a part in it. If there has been any comparison of views, and any effort towards a fair adjustment of interests, I, at least, have not been admitted to the conclave: perhaps it has been, because I do not deserve it; perhaps the part I took has excluded me. When I asked that the subject might be postponed until I should have time to offer what I considered as a fair compromise, in which something was to be yielded by both sides, I indicated the nature of the compromise I meant to propose. At that very time, the proposition of the gentleman from Goochland, (Mr. Pleasants,) was pending. I then offered the flag of truce, and I did not withdraw it, till the flag of truce was fired on; till I was told that my proposition would be rejected, without the least hesitation. It was then I intimated that gentlemen might expect strenuous debate. Would to Heaven I were willing to meet and to fulfil that promise; and never, while I have health to make my protest heard, never will I surrender the principle, that property is to be wholly and utterly disregarded. The gentleman from Rockbridge, tells us of his Scotch-Irish blood. That gentleman knows—yes, Sir, he well knows, that I have no prejudice against it. Nobody knows that better than he. He has felt the effects of it in his own person. I am far from blaming the gentleman—I respect the sentiment.

But, let me tell him, that although personally there is not a man in the Commonwealth or in this world that I would not as soon meet as him, yet if he brings us to Bannockburn, he will find that *Old Virginia* is as little disposed to submit to injustice as *New Virginia*. To what purpose are these threats? Does he suppose—can the gentleman suppose, that *Old Virginia* is to be scared whenever he shews the glittering sword? Does he imagine that we have lost all spirit, and all courage? and are prepared to submit to any yoke, that they propose to fasten upon us? I put it to the gentleman, knowing the persons whom he addresses, whether their spirit is not at least as warm, as generous, and as true as the spirit of that gentleman's own country.

Here Mr. Moore explained—declaring that he had never expected or intended to alarm the gentlemen of the East, but some gentleman had made a distinction between the *Old Virginia* stock, and he presumed, the *New Virginia* stock; and if ground like that, was to be taken, he would inform that gentleman, or any other, that they

of the West were prepared to take their stand: that they had no thought of yielding, and never would be driven to the wall. He had gone as far as he meant to go, and never would go further.

Mr. Leigh resumed: It was I who alluded to Old Virginia, but I did so in no disrespectful spirit. I thought I spoke in a manner highly complimentary, for I put the New Virginia stock on precisely the same footing as the old. I never manifested the least partiality between them.

Mr. Chairman: Though I did mean to debate these propositions with all the strength that God had given me, never did I rise with the same embarrassment, as I have experienced on this occasion. I went to work with the honest purpose of compromise. I met with difficulties without number, from quarters where I expected only support. I thought I had done ample justice to the West, and at the same time had done full justice to the East, and I expected the support of the East at least, if of no other part of the Commonwealth: judge then what was my surprise and affliction, when my good friend from Richmond, (Mr. Marshall,) gets up and expresses his approbation of my plan, and in the very next breath, says that he will accept that of the gentleman from Frederick, (Mr. Cooke). Up gets the gentleman from Loudoun, (Mr. Mercer,) and thanks his honoured and venerable and venerated friend from Richmond, for saying that he will vote for their proposition, and immediately after, another gentleman from Loudoun, (Mr. Henderson,) made an occasion to say that his highly venerated friend was his political father—that he took delight in following his lessons, and that it is gratifying to his heart to find, that his very venerable friend from Richmond, was willing to take what they proposed to give, if he could not get what he preferred. But, Sir, have we heard one word like a purpose to *meet* the generous spirit of that gentleman with a like generous spirit? Any, the least intimation, that if their proposition failed, they would accede to his? Not one word. Not one word, Sir,—not a syllable. To our affections they make their appeal with confidence; but when we in return make our appeal to the feelings of Old Virginia, or New Virginia, from them, we hear not one breath out of their lips. The generous and affectionate disposition of the gentleman from Richmond they applaud and countenance—but *they*—they will yield nothing! They were called upon to stand firm, and firm they stand.

The gentleman from Loudoun, (Mr. Henderson,) is willing to follow the gentleman from Richmond as his political father: in his wisdom, his virtue, his prudence, his good sense, he has the most unbounded reliance upon all of it: and then he tells him, it is his *vote* he wants, and not his *advice*. It is his vote he values; yet at the same instant, he must have known that that gentleman had said, he would take their proposition only as a last resort, and that he had recommended mine. Sir, I beg the gentlemen from Loudoun, to act fairly and to follow the advice of the gentleman from Richmond: but if it is not that, but his vote only that he wants, then let him come out fairly and openly and say so.

It is not his vote only that I want, I shall get that; I want his support: I want his weight of character: I am here feeble, and almost alone: alone, at least in this, that I am the only one who think it proper to debate this ground. I want such support as he gave to the system of the County Courts; let me have that support firmly and steadily: let me have the weight of his mind: and then the propriety of that proposition will be more perceptible to the House.

When I got to the House on Monday, I found the gentleman from Northampton upon the floor explaining the nature of his proposition. I heard but a few of his remarks, and the few of the details that I did hear, were not sufficient to inform me of the precise nature of his proposition. I did, to be sure, hear it read by the Clerk, but for reasons which must be familiar to every gentleman who has ever attended to the mere reading of a document where figures are concerned, I could not collect the precise sense of it. I lost the opportunity of seeing it before it was presented, by coming late to the House. Had I come but a few moments sooner, so as to have been in the House when it was offered, I should have suggested to that gentleman a slight modification, and not offered mine at all. That modification would have been only in the details, and arising simply out of this circumstance, that after repeated trials and considerations, I found when I came to district the small counties, that one hundred and twenty-six, was a more convenient number for the House of Delegates, than one hundred and twenty. But, I should have been contented to take all the gentleman's resolutions, and I will take them now, leaving the details for future arrangement. I will consent to withdraw mine, only submitting as an amendment to his the number one hundred and twenty-six, instead of one hundred and twenty members in the House of Delegates. I should prefer its increase hereafter. How that may meet the minds of the members from the West, I do not pretend to understand.

I came yesterday fully determined, if the debate should be forced on the Committee, that I would avow my willingness to take his proposition, and to withdraw mine. I came with a confidence arising from that sanguine temperament, with which I am

either blest or cursed, (and I really cannot tell whether it is more a blessing or a curse,) that I should be able to convince gentlemen from the West that I meant them fair: that I had come in the real spirit of compromise; but, Sir, I soon met with a damper. A gentleman got up, (Mr. Coalter,) and addressing the Committee, divided as all knew this Committee to be, declared that he would take the principle of the white basis, if they would give him landed Suffrage; a vote for lease-holders; an election of Governor by both Houses; an Executive Council, and the County Court system. If each and all of these things were not complied with, they would find him "firm as a rock, or, in other words, as a Scotch-Irishman." Such was his own language. Did the gentleman consider what he was doing? Did he recollect, that any member of this Committee by simply going over to the opposite party, has the absolute power at once to put an end to the rights of that side to which he belongs? I have only to yield, and the question is at an end; and that gentleman has only to yield, and it is more than at an end; for he is well known to possess that indomitable spirit, which, when once he has taken a stand, leaves no hope of change.

The gentleman from Rockbridge meets the gentleman from Stafford, and is willing to give him all he asks on the simple condition, that he shall take away immediately all he had given. Do gentlemen remember that this Convention was called on the declared principle, that the people have a right to amend the Constitution? Do they think that no other Convention will ever be called? When we have thrown all they ask into their hands, does any gentleman imagine they will be content? What is there to take away the inherent right of the people to call Convention after Convention, till members shall have got all they demand? Do gentlemen suppose that when this new Constitution shall be given, there will be no more complaints—no clamours? Do they think the new Constitution will be made so perfect, as to be incapable of amendment? What is to prevent the call of a Convention at any moment, but some effort by those who are able to take power into their own hands, and call for the protection of property?

In the commencement of this debate, all the gentlemen on the other side told us that an equal participation of political power was the grand fundamental principle, to depart from which, was to establish an aristocracy or monarchy, and that all those who did not share in that power, were at once made slaves. I will do the gentleman from Rockbridge the justice to own that his course is consistent, except in one respect: he tells us that it is aristocracy to base the Representation in the House of Delegates on any thing else than the number of free white citizens, and he formerly told us the same thing in relation to the Senate. But now I find that aristocracy may be tolerated in the Upper House, if they have democracy in the Lower. Now, there is nothing in the Bill of Rights to prevent our basing the Senate on an aristocratical principle, and the Lower House on a democratical one. They have found out, at last, that convenience may modify a general principle and adapt it to the wants and circumstances of the community. Sir, I defy the gentlemen to relieve themselves from the inconsistency charged, (I do not say proved but charged) upon them, on any principle in the world but this: They know that if they get the white basis in the Lower House, it is a matter of no sort of consequence what basis you adopt in the Senate—none, Sir—none at all. You have no control over the Lower House, and cannot have. When they offer this basis in the Senate, they know, perfectly, that practically it will be of no avail. They will have as complete possession of the Government and the property of the State, as it is possible for them to have—they know it, perfectly, if all the friends of the compound basis do not. They know it, and feel it. It is only among us that the idea is to be found that there is to be any protection in the Senate. The Senate based on the Federal numbers is to be our protection. The Senate! Are they to originate money bills? If you give them that power, you overturn at once the elementary principles of Republican Government; you overturn the entire theory on which the two branches have been kept separate hitherto. Gentlemen, I suppose, hardly intend this. Well, you are to have the Federal numbers in the Senate and the white basis in the House of Delegates—the Senate is to be the Representative of property—of slaves. What then? Do you give them the sole power to reject money bills without amendment? or do you let them amend? What then? The Lower House sends up a money bill laying unequal exactions on property: the Senate rejects the bill: Do not all gentlemen see that by withholding another money bill, which is very much needed, they can at any time throw on the Senate the responsibility of stopping the wheels of Government? But they amend the bill: what then? The Lower House rejects the amendments, and then the same controversy and all the same consequences ensue. Which of these two bodies, think you, will prevail in such a contest? The Senate—a small body of men elected for four years—or the House of Delegates, a large body of men, and elected but for a single year? Has any body heard of a solitary case where the Senate has stood out and defeated the Lower House any where? The only function of the Senate is to suspend

the order of the Lower House, till the House shall have time to grow cool and abandon their project, or till the people interpose and turn them out.

I appeal not to the examples in this country: I appeal to the history of England—to the House of Commons, and the House of Lords. What proposition was ever perseveringly pressed by the Commons and defeated by the other House? I am talking to gentlemen who are presumed to have studied the history and institutions of the mother country, (if, I may be permitted to call it by that name;) and I ask them to produce to me a single instance. Yet, we are to expect from the Senate ample protection and resistance against the power of the Lower House. Sir, are there no means of influence which can be brought to bear?

If appointments are to be made by a joint vote of the two Houses, then the whole patronage of Government will be in the House of Delegates.

If, by concurrent vote, great weight will be given to the Lower House, by its immediate connexion with the people. I desire any gentleman to tell me the reason, why members of the Senate are elected for four years, and members of the Lower House for only one? Why? What is the motive? You do not change the character of individuals: the men are just the same. Why, then, do you allow members of the Lower House a shorter term? Because they have the tax-giving power. The Lower House sends up a money-bill: if the people are dissatisfied with it, the next year they turn them all out. But, if they are displeased with the Senate, how can they get rid of them? That body remains firm and stable. They remain beyond the reach of the people: all the evils have been accomplished and felt, and it is too late to correct them. Constitute your two Houses on two different bases, and then one will be the democratic House, and the other will be the aristocratic House. All those who happen to have a little property, and much more those who have respect for such as do own it, and who wish them to retain it in their hands; all these will be the friends of aristocracy. Then you will have formed the Lower House on a democratic principle, and the Upper and smaller House on an aristocratic one. Now, let there be a contest between the two: and you will hear the same note that you heard so long and so loud before this Convention,—the cry of aristocracy. The Senate will immediately be condemned, as the aristocratic branch of the Legislature, and what strength, what stability, I pray you, can stand against that blast? What shall remain firm when that volcano shakes the land? The moment that contest arises, just as certainly as this Convention sits, will another Convention be called to abolish the aristocratical branch in the Government. Sir, there is not the slightest hope of its permanency. They begin in the outset with different principles in the construction of the two Houses as if it were done on purpose to breed new monsters to excite the passions of the people.

No, Sir, our whole chance is in giving some protection to property in the Lower House.

Here Mr. Leigh not being prepared with some documentary details to which it would be necessary to refer in farther prosecuting his argument, moved that the Committee rise.

It rose accordingly, and thereupon the House adjourned.

THURSDAY, DECEMBER 3, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Parks of the Methodist Church.

The House having again gone into Committee of the Whole, Mr. Pleasants in the Chair,

MR. LEIGH resumed the argument he had suspended yesterday, and went into an exposition and comparison of the several propositions, offered as grounds of compromise. He remonstrated against the idea of considering the proposition of Mr. Cooke, as any compromise at all, and dwelt on its effect, in ultimately swallowing up the power of the Senate, by giving it an organization, similar to that of the Lower House, and in the mean while cherishing a spirit of perpetual strife and the bitterest enmity between the two branches of the Government.

He reviewed the plan proposed by Mr. Gordon, and compared it with his own, shewing how Mr. G. arrived at his results, and insisting that if it should be adopted as a permanent basis, in a few years the same inequality would arise, and the same struggle have to be gone over again. Mr. L. professed himself willing to take Mr. Gordon's plan with one or two modifications.

He next proceeded to review Mr. Upshur's proposition, with which he was better pleased, and which he professed himself willing to adopt, if the number of the House of Delegates was changed from one hundred and twenty to one hundred and twenty-

six, a more convenient number in relation to the apportionment of districts; particularly in the Eastern parts of the State.

(Mr. Upshur expressed himself willing to make this modification.)

Mr. Leigh urged gentlemen's acceptance of the principles of this plan, and expressed his willingness to modify the details in any way that would leave the principles untouched.

He then went into a full exposition of his own plan; the general principle of which was to split the difference between the white basis and the mixed basis; with a modification. He explained the difference between his own and Mr. Marshall's plan, arising chiefly from the fact that the latter had gone upon the Census of 1820, while he had himself endeavoured to ascertain as nearly as possible the present population of the State.

[To make the parallel more intelligible, we have here thrown side by side, for the apportionment of the Houses, all the schemes proposed.]

SCHEMES.	Number of the House of Delegates.	Number of the Senate.	HOUSE OF DELEGATES.				SENATE.			
			1st or Western district.	2d or Valley district.	3d or Middle district.	4th or Tide Water district.	1st district.	2d district.	3d district.	4th district.
Mr. Cooke's,	120	36								
Mr. Gordon's,	120		26	24	37	33				
Mr. Upshur's,	120		26	22	38	34	7	6	9	8
Mr. Marshall's	126		24	23	43	36				
Mr. Leigh's,	126		26	23	42	35				

He stated the considerations of justice which had induced him to give the two Representatives which Mr. Marshall gave to the Middle and Tide-water districts, both to the West or Alleghany district: it was intended to meet the increasing population of the West. Besides, that district having twenty-six counties in it, he thought it ought to have twenty-six Delegates; else the district became too large to admit a personal knowledge of the Delegate by his constituents, and the proper degree of intercourse between them. This could not be complained of by the Valley, as the great Western division of the State got these votes on every question where Eastern and Western interests would come in conflict. He explained it also to have been his wish to have taken one more Delegate from each of the two Eastern districts, and given them also to the West. He should have preferred taking both from the Tide-water district; because he thought policy required that the Middle district should be strengthened as an arbiter between the two extremes, and a protector to both: to the East, against unreasonable taxation of their slave property, because it held large masses of that property: to the West, against any niggardliness of the East respecting Internal Improvements, because it had a great interest in all reasonable and feasible schemes for Internal Improvement.

Mr. L. then went into an explanation of the grounds on which this arrangement had been opposed by the Delegates from the Eastern division, who insisted on that division's having thirty-six Delegates in order that the Richmond district might have its quota of five. He shewed that his scheme gave a larger proportion to the Eastern division, or Tide-water country, than either Mr. Upshur's or Mr. Gordon's: thirty-five out of one hundred and twenty-six, being better than thirty-two out of one hundred and twenty. (See the table above.) Mr. L. here went into a number of details as to the apportionment of representatives among the various districts in the lower country, concluding from the whole statement the unreasonableness of the pertinacity which had diminished the advantage of his scheme, by insisting on so full a representation for the Richmond district. He addressed an argument to the members from the Middle district, and who were in favour of Mr. Gordon's plan—shewing that they would be greater gainers on his own scheme. To shew that what he had before said, as to the large counties of the West, and the propriety that one representative should be allowed to each of them, was not said *pro re nata*, merely to suit the case in hand, but had long before been his settled and avowed opinion, Mr. Leigh read extracts from a publication of his in 1824, called the Substitute, which went to the same effect and covered much of the ground he had lately been occupying in the general debate. He then passed to some general reflections on the state of existing parties—the odious nature of the struggle, the responsibility of those who had brought it on, and its painful effect on his own feelings.

He then went on to shew his reasons for the provision which forms a part of his plan, that the Legislature might lay off eight counties to the West of the Ridge whenever their increase of population should justify it. He thought it hard, that this part of his plan should have been censured, because he had not made this imperative upon the Legislature. He professed his readiness to accommodate the representation of every portion of the State to its circumstances, and his willingness to meet gentlemen of the West in a fair spirit of compromise, on grounds of expediency, (but not of imagined, natural or divine right to an equal representation of equal numbers). He concluded the review of his plan by alluding to the variation in the population of the same counties at different times, and then stated the arrangement he had made to meet this by allowing the representation to increase and diminish when circumstances should require.

Mr. L. then adverted in very forcible language to the prospect which lay before the Commonwealth, should all compromise be rejected. He professed his great horror at the idea of a division of the State: of a civil war he felt no fears, because the pressure of the General Government would prevent it, else it would be inevitable. All seemed thus far to have gone on it as a conceded ground that the West never would submit, but that the East would. He repelled such an idea; said the East had an alternative, and that he should despise himself as a driveller if he could see none. He knew perfectly what it was. He could not suppose the General Government would refuse their assent to a division of the State, which would break the power of Virginia. It would not be according to their past policy so to refuse—and if the State should be divided by the Ridge, it would be but a short time before the Valley would have to take the same ground in relation to the Trans-Alleghany country, as the lowlands were now taking with the entire West.

Mr. L. concluded by a reference to the natural ardour of his temper, and a profession of his freedom from every thing like personal resentment in matters of public concern.

MR. TYLER said, that he was in no situation to address an argument to the Committee. His state of health rendered that impracticable. He had risen merely because of the frequent references made by the gentleman from Chesterfield, to himself in common with those who represented the Richmond district. The gentleman had done him the favor of submitting to his inspection, his scheme of Representation some days before he submitted his proposition to the House. When he first saw it, the gentleman from Chesterfield had proposed to make the whole district from the New Kent line below, a *tabula rasa*—to obliterate the county lines, and to form one county out of James City, Williamsburg, York, Warwick, and Elizabeth City. To this he had objected, and the gentleman from Chesterfield had readily acquiesced in the objection. Charles City and New Kent were to have a Delegate each.

[Mr. Leigh said, that it was on the suggestion of Mr. Tyler, that New Kent, Charles City and James City, were united as an election district—and that his plan had been varied in this; that he had then intended to compose the House of Delegates of one hundred and twenty-nine members; whereas the present proposition reduced that number to one hundred and twenty-six.]

Mr. Tyler resumed, that he did make the suggestion mentioned by the gentleman, and he was ready to avow his reasons for it every where. The county of Charles City was the county of his birth and residence; but yet he could not consent to take for it a Delegate, while one was denied to Elizabeth City, which in his view, presented much stronger claims to a separate representation. The population of Elizabeth City was greater than that of Charles City, and she had also a separate and distinct interest to uphold—the pilot interest—one of great importance, and which he felt himself incapable of properly representing. In truth, the General Assembly had uniformly delivered a *carte blanche* into the hands of her Delegates on that subject.

He would frankly say, that he approved of a plan of county Representation throughout the State, based upon the principles which had entered into the plan of his friend from Northampton. He had in fact come to the House this morning with such a plan; but that his colleagues had advised him not to present it, and he had for the present, abandoned the idea of doing so. He was very unwilling to disfranchise any one of the counties of his district—but he had shaken off the influences of local attachment, and was resolved to sacrifice much upon the altar of harmony and conciliation. Parga, then, said he, must be surrendered to the Albanians. Be it so, Sir, if the surrender can operate as a cement to our union in sentiment. He came here prepared to bind up in one common bond all the people of Virginia—to preserve the integrity of the State—and he should rejoice if the plan of gentlemen succeeded, although it visited the counties of his district with extensive disfranchisement. His district paid an amount of revenue, equal within a very small fraction, to the amount paid by all the Trans-Alleghany country. The county of his birth and residence, at the hands of whose inhabitants he had never received any thing but acts of unmeasured kindness and confidence, was to part with its political power; but all this, nay more, he would

part with sooner than be instrumental in destroying those sentiments of brotherly feeling which had heretofore bound the State together. He was Virginian throughout. He acknowledged no discrimination between those of the *new blood* or the *old blood*. In all his public course he had acted in reference to all Virginia, and he should continue to do so—but he would ask if *he* could make the sacrifices he had indicated, what could prevent others from harmonising?

Before he took his seat, he would say that he knew of no very sound objection to preserving, if practicable, the county system. It had worked well in his own opinion. Was there any cancer which required to be cut out? Warwick had been the theme of much rhetorical display, and if disfranchised, we should destroy the most fruitful source of popular eloquence; but he submitted it in all candour to gentlemen to say, what evils Warwick had ever done? From the dawn of the revolution she had always been the fond advocate of free principles, and had contributed by her voice and from her purse to maintain the cause of liberty. True; she occupied a small space upon the map, but surely no one would base representation upon a territorial principle, without reference to other considerations—she contained six hundred and eighty white persons, and yet paid nearly one third the tax paid by fourteen thousand in the populous county of Monongalia. He meant no invidious discriminations, but merely to do justice to those who had sent him there.

He concluded by expressing the sincere wish that the proposition then before the House would prove to be the harbinger of an harmonious result.

MR. COOKE said, that since the various propositions for a compromise-basis of Representation had been submitted to the House, he had, with a view to act advisedly on the subject, carefully examined and compared them all, both as to their *principles* and their *results*. My purpose, at present, said he, is to lay some of these *results* before the Committee, and to make a few brief remarks on the principles involved in *three* of the plans at present under consideration. I allude to those offered by the members from the Middle and Western districts, by the member from Northampton, and by the member from Chesterfield. In the comparison of their plans, the first difficulty which I encountered, arose out of the circumstance that, in the *number* of the Legislative bodies, each one varies from the rest: The plan of the members from the Middle and Western districts, contemplating a House of Delegates of one hundred and twenty, and a Senate of thirty-six: That of the member from Northampton, a House of Delegates of one hundred and twenty, and a Senate of thirty: That of the member from Chesterfield, a House of Delegates of one hundred and twenty-six, without specifying at all the number of the Senatorial body. With a view to institute a fair comparison between them, as to practical results, I reduced them all to the common standard of one hundred and twenty members in the House of Delegates, and thirty-six in the Senate. I then applied the *principle of apportionment* peculiar to each plan, to a House of Delegates and a Senate containing the numbers just mentioned, and found that they distributed political power to the people East of the Blue Ridge, and to those West of it, in the following proportions:

The plans of the members from the Middle and Western district, gives, in the

HOUSE OF DELEGATES.					Members.
To the West,	-	-	-	-	56
To the East,	-	-	-	-	64
Majority for the East,					8
The plan of the gentleman from Chesterfield, gives, in the					

HOUSE OF DELEGATES.					
To the West,	-	-	-	-	48
To the East,	-	-	-	-	72
Majority for the East,					24
The plan of the gentleman from Northampton, gives, in the					

HOUSE OF DELEGATES.					
To the West,	-	-	-	-	48
To the East,	-	-	-	-	72
Majority of the East,					24
The plan of the members from the Middle and Western districts, in the					

SENATE OF THIRTY-SIX.					
To the West,	-	-	-	-	13
To the East,	-	-	-	-	23
Majority for the East,					10

The plan of the gentleman from Chesterfield, gives, in a

	SENATE OF THIRTY-SIX.				Members.
To the West,	-	-	-	-	14.4 or 14
To the East,	-	-	-	-	21.6 or 22
Majority for the East,	-	-	-	-	8

The plan of the gentleman from Northampton, gives, in a

	SENATE OF THIRTY-SIX.				
To the West,	-	-	-	-	15.6 or 16
To the East,	-	-	-	-	20.4 or 20
Majority for the East,	-	-	-	-	4

Having presented these practical *results*, I proceed to make a few remarks, and they shall be very brief, on the *principle of apportionment* on which these plans are formed, or by which they are *hereafter* to be modified. That proposed by the Middle and Western districts, requires little or no explanation. It was first proposed, in effect, by the worthy member from Goochland, (Gov. Pleasants,) on the 1st ultimo, and has been ever since under the view of the Committee. It proposes Federal numbers as the basis of Representation in the Senate, and white population as the basis in the House of Delegates. It is almost superfluous to remark, that the basis of white population in the Senate, long and strenuously contended for by the members from the Middle and Western districts, has been abandoned, on the principle of compromise. They have also abandoned, on the same principle, their favorite number of twenty-four for the Senate, and have proposed that it shall consist of thirty-six. They have added to their plan a decennial assessment of all the lands in the Commonwealth subject to taxation, as a fit accompaniment for the decennial apportionment of Representation, which they consider an essential feature in any *just* plan for the distribution of political power, in a country whose population is increasing, in the different sections, in such unequal ratios.

In considering the *principle of apportionment* embraced in the plan of the gentleman from Northampton, the first remark to be made is, that it operates only in *futuro*, and is not adhered to at all in the actual distribution of power made *in presenti*. His *actual* distribution is an *arbitrary one*, and more favourable to the *West* than that of the gentleman from Chesterfield. His *principle of future* apportionment, is on the contrary, less favourable than that on which the gentleman from Chesterfield, in common with the Chief Justice of the United States, has founded his actual apportionment. I understood the gentleman from Northampton to contend, that his principle was *more* favourable to the West, than that of his friend from Chesterfield, and that it derived this advantage from the circumstance of his having introduced a *third* element into its constitution; from the circumstance of his proposing "a fair average of the *three* ratios, viz: 1st, of white population; 2d, of white population and taxation combined; and 3d, of Federal numbers;" while that of the gentleman from Chesterfield proposes the average of *two* ratios only, that of white population, and that of white population and taxation combined. In other words, he contends, that the introduction of the *third* element, of Federal numbers, renders *his* average more favourable to the West, than the average of the gentleman from Chesterfield.

But, in this he is clearly mistaken. A comparison of the two principles, through the medium of their *results*, will shew that *his* is *less* favourable to the West, than that of the gentleman from Chesterfield.

Take, for example, the calculation made by the Chief Justice, (and printed for the use of the Committee,) of the *results* of his principle, which is the same with that of the gentleman from Chesterfield, when applied to a House of one hundred and twenty-six members. He tells you, and correctly, I doubt not, that in such a House the West would be entitled,

On the basis of white population, to members	-	-	-	-	53
On the basis of Federal numbers, to	-	-	-	-	40
On the average of the two, to	-	-	-	-	46½

Now, it is conceded on all hands, that the basis of Federal numbers, and the basis of white population and taxation combined, are practically, and in results, the same—in other words, that either basis would give to the West forty-six members, and no more, out of one hundred and twenty-six. Taking this as true, let us see how the *three-fold* average of the gentleman from Northampton will operate on the people of the West. They will be entitled,

On the basis of white population, to	-	-	-	-	53
On the basis of Federal numbers, to	-	-	-	-	40
On the basis of white population and taxation combined, again to	-	-	-	-	40

Total,	-	-	-	-	133
Divide by three, to attain the "fair average of the three ratios," as proposed by the gentleman from Northampton, and you have	-	-	-	-	44½

Thus, his *three-fold* average gives to the people of the West *two and one-sixth* members less than the *two-fold* ratio of the gentleman from Chesterfield. And thus for the plainest reason in the world, he introduces *two* elements into his average, unfavourable to the Western people, viz: Federal numbers, and taxation and population combined; whereas, the gentleman from Chesterfield introduces only *one* unfavourable element—the favourable element of white population being common to both. His principle, then, of *future* apportionment, is worse than the principle of *actual* apportionment resorted to by the gentleman from Chesterfield, as it regards the interests of the Western people. His *actual* distribution, *in presenti*, is, in regard to the *Senate*, more favourable to the West, being, as far as I can perceive, merely arbitrary, and not in any manner conformable to his principle of future apportionment.

A word or two with regard to his plan for re-apportioning political power, at some future period. Is it not a strong objection to that plan, in the eyes of the Western people, that its execution is left at the absolute discretion of an Eastern majority in both of the Legislative bodies? Let us examine his third resolution.

“*Resolved*, That the Legislature *shall have power* to re-arrange the representation in both Houses of the General Assembly, once in every _____ years, upon a fair average of the following ratios, viz: 1st, of white population; 2d, of white population and taxation combined; 3d, of Federal numbers.”

Does he suppose, that the people of the West will regard, with a favourable eye, a plan for a re-apportionment of representation—for an adaptation of the members of the two Houses to their comparatively fast increasing population—which may or may not be carried into execution at the will and pleasure of an Eastern majority in both of the Legislative Houses? Does he not perceive, that if his plan were carried into full effect at present, and if it should be found some five or ten years hence, that from the comparatively rapid increase of Western population, the two divisions of the State are very unequally represented, the Western people will call loudly for a re-apportionment? And if the people of the East, acting on the principle which he and his friends insist is the great master-spring of human actions—I mean on the principle of selfishness—should refuse to re-apportion representation, would not the same divisions—the same sectional animosities—the same discord and confusion, be *re-produced*, which we are seeking to heal, and to prevent in all time to come? In a word, are not the seeds of new discord, of new dissensions, sowed in the very act by which existing dissensions are sought to be removed? Believing, as I do, that he fairly and honestly seeks to provide, not only for present exigencies, but for future tranquillity, I recommend these questions to his grave and considerate reflection.

In commenting on the objections to *his* plan for the future apportionment of representation, I have anticipated some of those, which apply with equal force to that of the gentleman from Chesterfield. The prospective augmentation of the power of the West in the House of Delegates, is made in *his* plan too, to depend on the will and pleasure of an overwhelming Eastern majority in both of the Legislative bodies. He gives *power* to the Legislature to create *eight* Western counties, and to confer one Representative in the House of Delegates, on each of these new counties. But does he forget how often he has told us, and with what emphatic earnestness, that he will put *his* rights in the power of *no man*, unless it be clearly the *interest* of that man to exercise that *power* to his advantage—or at least with fairness? And does he not perceive, that it will be the interest of the Eastern people, or that, on his own principle, of the selfishness of man, they will think it their interest, to refuse to create these Western counties, and thus give additional power to the rival section of the Commonwealth? May we not, on his own principles, entertain a well-grounded apprehension, that the people of the East will so refuse? And if they do, will not the clamours of the West be as loud as ever? Will they not again call for a Convention to redress their grievances? Is it not better, I ask him in sober seriousness, to make his proposed re-apportionment imperative on the Legislative bodies, and thereby prevent, as far as they can be prevented, all future trouble and dissension? And I would further ask him, if it would not be more just, and more satisfactory to the Western people, to apply to *future* apportionments the *same* principle of the two-fold average, by which he *now* regulates the actual distribution of political power? If that principle be more just, and fair, and honourable, as I doubt not he thinks it is, will it not be equally just, and fair, and honourable, in all time to come? Is he willing, that his scheme of representation shall be considered a mere temporary expedient for the adjustment of existing differences, while it holds out the certain evidence of creating future quarrels, and of embroiling the Commonwealth by a new struggle for power? These are grave and serious questions, and worthy of his attentive consideration.

But, is there not another feature in his scheme of future apportionment, which will seem odious to the people of the West?

He gives *power* to the Legislative bodies to add *twenty-four members* to the House of Delegates, whenever, and from whatever quarter of the Commonwealth, it may to them seem fit, provided *three-fifths* of each House of the Legislature shall concur in

the measure. These twenty-four members may be derived from the extreme *West*, or from the extreme *East*, or *all from the East*, if it shall seem good to *three-fifths* of the Legislative bodies. And, in this actual apportionment of the number of Representatives in those bodies, he gives *more than three-fifths* to the country East of the Ridge. He thus gives to the Eastern people the *power*, at the same time that he holds out to them the strongest temptation, to re-establish a greater inequality of representation in the House of Delegates, than has ever existed in the Commonwealth—a greater inequality of representation than that which has produced all the dissensions, all the turmoils, the existence of which, at present, he regards with so much horror.

In short, Sir, what would it avail, if we, the *Representatives* of the people, were to accept a compromise like this, which would be rejected by the unanimous voice of all the *West*.

I have thus stated, respectfully, but frankly, the objections which seem to me conclusive against the adoption of either of the proposed schemes of compromise, in their present form. Believing, as I do, that they are nevertheless offered in the spirit of conciliation, I submit to the gentlemen who have offered them, whether it would not be advisable to attempt, at least, to render them more palatable to the great section of the Commonwealth to which they are offered.

MR. UPSHUR rose in reply to Mr. Cooke :

MR. CHAIRMAN,—I have heard the remarks of the gentleman from Frederick (Mr. Cooke) with peculiar pleasure. I perfectly understand, and I am fully able to appreciate, the conciliatory temper in which they were offered. If there be no other objections to my scheme, than those which he has urged, I can remove them all so easily, that I am not without hope of ultimately receiving his support. One consideration there is, which would weaken this hope, if I did not know the gentleman from Frederick to be superior to all views of a personal kind, when opposed to his sense of public duty, and to the obvious interests of the Commonwealth. The gentleman has himself offered a plan of compromise, which has not yet been called up for consideration, and which he doubtless believes to be preferable to that now before us. He proposes to organize the House of Delegates upon the basis of white population, and the Senate upon that of Federal numbers; increasing the Senate to thirty-six, but conferring on it no additional Legislative powers, and preserving its present organization in all other respects. Before I proceed to remove the objections which have been urged against the measure now under consideration, permit me to remark, that the scheme proposed by the gentleman from Frederick, as a substitute for it, is in fact, no compromise at all. The term compromise, necessarily implies a surrender of something which the party has power to retain, in consideration of something to be surrendered to it in return. Now, no fact can be better established than this, that from the commencement of our Session to this hour, the advocates of the basis of white population, have not been able to carry that principle for the Senate. They have at all times been able to carry their principle for the House of Delegates, and we, to carry ours for the Senate. What then do they offer us under the name of compromise? Nothing more than this, Sir, that they will *consent* that we shall retain what we already possess, and what they have not, and never have had, power to take away from us. I will not enquire whether the terms thus offered, are fair, just and equal, or not; I will not debate the terms of a compromise, where no compromise is offered. It would, indeed, better deserve that name, if gentlemen would surrender the Senate to us to be organized in all respects, upon our own principles, in consideration of a similar surrender on our part, of the House of Delegates to them. Even this would not be perfectly equal, but we should not hesitate to meet them on that ground. This, however, they will not consent to, nor do they propose to yield any thing whatever, except precisely that which we already possess, and that which their consent will not give us either in greater degree, or in greater security. I entreat gentlemen to reflect on this. We have undoubted proof that in many parts of the Commonwealth, the people have taken this subject into their own hands. We are but their agents, their servants, bound to obey their will. It is known that the changes which have already taken place, have all been in favor of Eastern principles, and such, it is but reasonable to suppose, will all future changes be. Suppose, Sir, that the sceptre should pass over to us; suppose that we should have, as we probably shall have, power to carry our principle not for the Senate only, but for both Houses of the General Assembly. Can gentlemen imagine that we shall be restrained from doing so, by the acceptance of the proposition of the gentleman from Frederick? Can we feel under any obligation to refrain from the exercise of our power to its full extent, merely because gentlemen who *could not* restrain us, have consented that we should exercise that power in less degree? What equivalent can be demanded, where nothing is tendered? How can gentlemen expect forbearance from us, after having rejected all terms of compromise tendered by us, without having offered on their part, any other terms which we can regard as compromise at all? It is impossible, Sir, and I entreat gentlemen to be assured, that it is impossible. If, however, gentlemen shall

meet us on the terms, offered by ourselves; terms which demand no sacrifice of principle, and which are no otherwise unequal, than as they operate more for their advantage than for ours; then, Sir, whatever may be the future condition of parties, we shall feel under an absolute obligation to adhere to our agreement. This will certainly be my own feeling, and I think I may safely affirm that it will be the feeling of all those who act with me. This view of the subject certainly demands the grave consideration of all those, who are seeking in good faith an amicable arrangement of our present differences.

The gentleman from Frederick has endeavored to shew, that the average of three ratios, is less favorable to the West, than the average of two. So far as the *present time* is concerned, he is undoubtedly correct, and the difference is precisely what he states it to be. I distinctly admitted this in the exposition which I gave of this measure, when it was first called up for consideration. Two of the ratios, in the *present condition* of the country, are favorable to the East, and of course, the combination of those two, with another less favorable to them, must produce a *present* result correspondently favorable. But it is for gentlemen to choose between the present hour, and all future time. One thing is certain. If the West be, as it is admitted to be, acquiring more rapidly than the East, all the elements of political power, precisely in proportion as you multiply those elements, will you accelerate their progress and hasten the period at which their power will preponderate. This, however, is a topic which I have no disposition to press. If the arguments which I have already offered, have failed to convince, I have nothing now to add to them. I repeat, that I will not be instrumental in *forcing* a benefit upon reluctant minds. Gentlemen are at perfect liberty to carve for themselves. My three ratios are before them, and I do in my conscience believe that it is the peculiar interest of the West, to retain every one of them. But if those for whose benefit alone this combination was designed, are dissatisfied with it, I will unite with them in erasing from the ratios, any one which may be most obnoxious to them.

The gentleman from Frederick is undoubtedly mistaken in supposing, that the scheme of the gentleman from Chesterfield (Mr. Leigh) is more favorable to the West than my own. The difference between them, resulting from the operation of three ratios instead of two, upon future apportionments of Representation, I have already explained. There is an equally obvious difference, if we consider the two schemes only with reference to the distribution of power at the present time. It is true that in the House of Delegates, the scheme of the gentleman from Chesterfield gives to the West, two members and a fraction more than my own; that is, there is a difference of about one sixtieth part of that House, in favor of the scheme of the gentleman from Chesterfield. But his principle, applied to the Senate, gives to the West four members less than mine; that is, nearly *one eighth* of that House in favor of my scheme. The gentleman from Frederick would not have failed to discover this, had he applied the principle of the gentleman from Chesterfield to the Senate. He is equally mistaken in supposing that my arrangement of the Senate is merely arbitrary, and not according to my own principle. It is true that the results do not precisely illustrate the principle, but the reason of this was fully explained by me, in the opening of this subject a day or two ago. In carrying out my calculations, I found a fraction of half a member in each of the four great districts, and in every instance, not in the Senate only, but in the House of Delegates also, the fractions were taken from the East and given to the West. Hence it is, that thirteen Senators are assigned to the two districts West of the Ridge, instead of twelve, which is their just number. This arrangement, suggested by a desire to reconcile the West to this reasonable plan of compromise, and prompted by the most friendly feeling towards that country, presents the only instance, or the only reason for a departure from my strict principle in its application to practice.

I have but one other remark to make upon this branch of the subject. It has appeared to some gentlemen, too plain for argument,—manifest upon the very face of my proposition, that it *must* be less favorable to them than that of the gentleman from Chesterfield, since I have taken *two* ratios favorable to the East, and he only *one*. Gentlemen fall into this mistake, by forgetting the precise character of the object we are pursuing. We are engaged in an arithmetical process, by which we propose to arrive at an *average* of certain given quantities. In proportion, therefore, as you multiply those quantities, you necessarily increase your *divisor*, but you do not *necessarily* change your quotient. Let me illustrate by an example. Suppose that each of the three ratios before us is equal to three; then, to obtain the average of two of them, you divide their sum, which is six, by two, and your quotient is three. To obtain the average of all of them, you divide their sum, which is nine, by three, and your quotient here also, is three. Thus if the ratios before us were all precisely equal, it is evident that the result, with reference to the present distribution of power, would be precisely the same, whether the average were taken of two, or of three of those ratios. In point of fact, however, they are not equal. Population and taxation com-

bined, give very nearly the same result with Federal numbers, and these two may therefore be assumed as equal. But, white population is much more favorable to the West than either of the other ratios; and the difference in the averages, is precisely the loss sustained in this largest ratio, by taking three as the divisor instead of two. The mode of operation and the reason of the result, must be manifest to every arithmetician.

The gentleman from Frederick urges a still farther objection to my scheme, founded on the fact that it leaves it to the discretion of the Legislature, whether to re-arrange the Representation at any future time, or not; and he argues, that as the majority in the Legislature must be with the East, according to any plan of *present* apportionment, it will be in the power of that majority, by refusing to re-apportion, to withhold forever from the West, all benefit of the rule. It did not enter into my contemplation, Sir, that any future Legislature of Virginia could so far misunderstand the obvious meaning of the expression, as to be guilty of such gross injustice. In adopting the particular phraseology before you, I had no object in view but this. It occurred to me as probable, nay, almost certain,—that it would be found, at some future period designated for re-apportionment of Representation,—that no change had occurred in the relative condition of the several parts of the Commonwealth, to render such re-apportionment necessary. In this view of the subject and not doubting that the Legislature would be disposed at all times, and in good faith, to carry the Constitution into effect, according to its true intent and meaning, I saw some convenience and no danger, in trusting the subject to Legislative discretion. I have no difficulty, however, in conforming to the wishes of other gentlemen in this respect. I will therefore, Sir, with the leave of the Committee, strike out the words, “have power to,” so as to leave it mandatory upon the Legislature to re-apportion the Representation at stated periods.

I have thus endeavored, Sir, by a candid exposition of my plan, to obviate all the objections of the gentleman from Frederick. It would rejoice me to believe, that he is reconciled, if not convinced, and that we may yet hope for his co-operation in settling, upon the simple plan before you, this distressing and oppressive contest. It cannot be doubted, that the compromise I have offered is in substance and in truth, a compromise of *principle*, and being so, we must submit to the consequences, let them fall as they may. If, in the application of a just principle, an inequality of political power shall be the result, it will only prove that the party which enjoys the superiority, *ought to enjoy it*, and the opposing party, cannot, of course, have any good reason to complain. In point of fact, however, the practical majority of the East will be very small. The line of separation between parties, is not a geographical, but a political line. Many counties lying immediately under the Eastern side of the Blue Ridge, are essentially Western in their interests, and consequently, in their political views. These, therefore, must be counted to the West, as to all practical purposes, and thus it is, that the apparent superiority of the East dwindles into nothing, and cannot be seriously felt in the operations of Government.

But, Sir, all enquiries of this sort, are unworthy of the occasion. I again entreat gentlemen not to confine their views to present results. Let us venture to hope that we are laboring for distant times, and let us endeavor to accommodate our systems to all the probable changes which those times will produce. I cannot sufficiently commend the spirit which characterized the remarks of my honorable friend from Charles City, (Mr. Tyler.) Like him, I am laboring for *all* Virginia, and dear to me as is the hope that my own native county may have her separate Representation under the new Constitution, I will not permit that, nor any other consideration merely local or temporary, to oppose any obstacle to a just, fair, and wise arrangement of this perplexing subject.

MR. DODDRIDGE addressed the Committee as follows:

Mr. Chairman,—I certainly did not expect to say one word more on the basis of Representation. I had supposed until yesterday, that every member considered the argument as at an end, and all that remained was to give our votes finally. After a session of nine weeks, we ought, if ever, to have made up our minds, so far as to preclude all hope of altering them by farther discussion.

I will ask indulgence a few minutes. The gentleman from Northampton says, the white basis in the House of Delegates is in the power of the West, and the Federal basis in the Senate in the power of the East. This, he says, has been the case for a long time. He therefore concludes, that acceding to these bases respectively, would be no compromise. The gentleman is mistaken. I had supposed every member knew, that although forty-nine members voted for our basis in the Lower House, yet several of them only did so with a view to the Senate. They are not committed—you all know they are not.

If they were committed, what would be the situation of parties in the Convention? We have a majority as to one House, and you as to the other. We cannot adopt an amendment on our principles without your consent, nor can you on your principles

without ours. Neither of us can stir without the other; we cannot move one step without compromise. This view of our situation has induced me, (I only speak for myself,) to accede to the Federal number in the Senate, on securing the white basis in the Lower House. When I agree, even to this, I do not certainly know that my constituents would accept a Constitution founded on that agreement. But I do know, they never will accept one in the least degree acknowledging a mixed basis in the House of Delegates. It would be idle to offer one to them. They must and would reject it.

We are warned of the awful consequences of parting, without coming to some agreement. This warning voice sounds both ways. The argument is a two-edged sword; it cuts both ways, and it behooves us to reflect well on whose shoulders the responsibility will rest. It will not be taken amiss if I should say, that in every proposition for accommodating our differences, except that submitted by the gentleman from Frederick, there is one district which is to furnish the sacrifice required for peace. I need not say, that is the district West of the Alleghany; and I will, therefore, endeavour to imitate the candour and decision of others.

The gentleman from Chesterfield, in his first argument on the basis, declared that a Government in this State, founded on the right of numbers of white population, would be such a cruel, intolerable, and insupportable tyranny, as no man ever did, could or would submit to. About seventy hours since, and again to-day, that gentleman has repeated this declaration. Such, then, is the deliberate judgment of that gentleman. The gentleman from Charlotte (Mr. Randolph,) with equal candour declared yesterday, that any Constitution, which would establish in the House of Delegates the basis of free white numbers, would be a *Jacobinical* Government, to which he never could submit. Those gentlemen occupy, and deservedly, a large space in this House, and in public opinion. On this ground, the latter gentleman planted his staff, and nailed his flag. As I view things, gentlemen have a right to maintain as they do, that our doctrines tend to anarchy, despotism, or Jacobinism, and to support their opinions by fair argument; in doing so, they give no cause of personal offence. On the other hand, I have a right to maintain that their doctrines go to build up an oligarchy of wealth. Here, then, we stand on equal ground. In the same spirit of frankness, that animates the gentleman from Charlotte, I now say, and for the last time, that yielding us the free white basis in the House of Delegates, with a new apportionment of Representation after the next Census, and periodical enumerations and apportionments, I will yield the Federal number in the Senate. Further than this I will never go, and here I nail my flag.

What then is to be done?

There are three possible results to our deliberations. One of these is certain. The first, and perhaps the most probable, is an adjournment without doing any thing. The second, an agreement by the West to join the East, in forming a Constitution, which the people must reject. The third, and that which I think will happen, if the first does not, that the members from the East will act for themselves, and tender to the people what shall seem to them most advisable.

Of these three results, the first would tend to the least present commotion. We would return to our subjection under the present Government. We would labour for a while under the inequality of which we complain, and which we came here to remove. This inequality would be the less odious, as the principles on which it rests, are not of your own assumption. Your power came to you by descent, and is the result of accidental and fortuitous circumstances, of changes, of settlement, population and wealth. The second result, I cannot contemplate without dismay. May I ask my Western brethren, who of them feels that he has power from his constituents to adopt in both Houses, any mixed basis whatever? Do we not all know that such a basis would not, ought not, and could not be accepted? And surely, the rejection of our work by our own constituents, would leave the public mind more exasperated than we are now prepared to anticipate. Should gentlemen from the East do what they have power to do, the responsibility will be their own. It is vain to conceal it; they have power to do in this Convention what they please, unless some of them should change their minds. Let them throw out for consideration, a Constitution formed by themselves—they will consecrate their own power, and their unequal rule will be the result of their own conduct—of principles assumed and enforced, by themselves, for which they will be responsible.

The most favorable proposition for the West, is that of the gentleman from Richmond (Chief Justice Marshall.) The ratio of Representation proposed by him, is to be composed of all free whites, and three-tenths of all people of colour, bond and free. I request gentlemen from the West to look at this. The whole slave population, is four hundred and forty-eight thousand two hundred and ninety-four; of this, a balance of three hundred and forty-six thousand eight hundred and seventy-three, is owned in the East. Add to this, the balance of free people of colour in the East, which is twenty-two thousand eight hundred and eighty-six, and they have a balance of coloured population, bond and free, in the East, of three hundred and seventy-five thou-

sand seven hundred and fifty-nine; three-tenths of which, it is proposed to add to the Eastern white population, which, by adding to it the present majority of white inhabitants, of forty-three thousand two hundred and twenty, will give the East a majority of one hundred and fifty-five thousand nine hundred and forty-five; placing us nearly back to our condition in 1790.

Who of us can venture to propose such a scheme to our constituents?

In these remarks, I assume the estimate of the Auditor, as sufficiently accurate for the present purpose—and if not, whose fault is it, that this Convention is not in possession of an official table of population? The fault is not that of the West, but of a public body not now existing, which forced us here on the Census of 1810, and purposely kept from our eyes a true return of the present population.

Unless gentlemen accept our peace-offering—unless they will accept the one basis in the Senate, and yield our claim in the other House, I can see no good as likely to result from our labours. We shall do nothing, but continue to exasperate each other.

MR. RANDOLPH said, it was with unfeigned satisfaction, and equally unfeigned surprise, he perceived that the gentleman who had just taken his seat had so far reconciled himself to the good old Constitution, with all the burdens and privations it imposed, and against which he had waged an unrelenting war from the first day the Convention had been sitting until now: And he rose to express his unfeigned satisfaction, and equal surprise that he, the gentleman, had made the discovery that he could live comfortably and happily under this old Constitution; all the clamour which had been raised against it to the contrary notwithstanding.

A little while ago, and the Constitution, in the eyes of that gentleman, was one mass of political deformity, but now it seemed that the gentleman on a nearer approach had inverted his glass, and had discovered that its features, if not perfectly beautiful, were at least such as to constitute it a companion which any man might feel himself happy and honoured to live with.

But, the main object for which he had risen, was to assure the gentleman from Brooke, for whose conciliatory manner, observed throughout the entire course of this debate, he offered him his most sincere and respectful acknowledgments, that if there was one member on that side of the House, who, while he protested against having a Constitution forced down their throats by a bare majority, would undertake to do that to others which he would not suffer others to do to him, such a man should never have his vote: so far as depended upon him, no other Constitution than that which they had all lived happily under, for so long a course of time, should be imposed upon the gentleman and his constituents.

He would add one word, as to the *ultimatum* for which the gentleman contended, viz: the basis of white population exclusively in one branch of the Legislature and the Federal number in the other. He declared with a sincerity which his vote would be found to vouch for, that if the gentleman should succeed in imposing on them the hard and stern condition of submitting to so intolerable a yoke in the Lower House, he would yield to him the same principle in the other, and let both branches be based on the white population alone. He should do so by preference. He would prefer having both branches on the white basis, to the Manichæan plan, of a good and an evil principle, in which, as in the Manichæan system, the evil principle was the stronger, and was always in the end sure to prevail. To adopt such a plan could be doing nothing but sowing the seeds of interminable discord, which must lead to consequences that all could see. He would vote with the gentleman so soon as he should have vanquished them. He would then go for the whole of what he contended for, by preference. He would sooner throw himself upon the generosity, he might almost say, the charity of the West, than take a fallacious security—not the Balkan—but a mound of sand—something with which to cheat his constituents, crying to them peace, peace, when there was no peace, and never could be any.

From the days of Aristotle till that day, no such Government had ever been heard of—it was a monster. Two branches of the Legislature representing the same people, elected by the same voters, to manage the same interests, to be pitted against each other like two game cocks, to tear and wound each other till one or the other should be forced to submit; that was the Government proposed for Virginia for all time to come. A Government of numbers in opposition to property was Jacobinism, rank Jacobinism. He was about to say pure Jacobinism—but nothing pure; nothing defecated could belong to the thing. It was to be an arraying of numbers against property, and then they would soon hear the old cry, “peace to the cottage, war to the palace,” and when the Convention should have established this Jacobinical principle, it was not a few despised nobles—not a few hated priests, odious at once for their hypocrisy and their rapacity, no—it was the body of freeholders, the substantial yeomanry of the Commonwealth, into whose mouth they were to put that bridle, and into whose nose they would put that hook. But they never could do it: by him and his friends they never should do it: they ought not—they could not consent to it. And as he had said once before, to make the attempt would only be to sound the

trumpet of civil war. It might, at first, be a weaponless warfare, a war of words; but it would pour into the cup of existence an animosity so deep and deadly; it would fix in the bosoms of the injured a wound so rankling and remediless; that nothing short of the plenary power of the Federal Government would be able to keep Virginia together. There was another consideration which he had intended to reserve for an after time—but he would submit it now—to those who were opposed to the unconstitutional; he was about to say, to the arbitrary usurpations of the Federal Government—not to trust their objections to this Convention or to the Constitution which the Convention might finally adopt, to be submitted to their masters at Washington to have their *imprimatur*. He foresaw if the basis of white population should be agreed to for the Lower House, and the basis of the Federal number for the Senate, when it came to be debated in Congress whether such a form of Government was republican or not (for the General Government was bound to guaranty to every State in the Union a republican form of Government,) it was easy to see what would be the course of such a debate in the future House of Representatives and Senate.

But, his purpose had not been to enter into the question, but to assure the gentleman from Brooke that he should be the last man in the world to mete out to him and to his friends in the West the hard measure which that gentleman until that day had with relentless and inexorable determination endeavoured to mete out to him and his friends. What had produced so great a change, he did not pretend to know: it was sufficient for him to mark it and to note it.

Mr. Doddridge said, that his sentiments had undergone no change whatever, and if—

[Here Mr. Randolph interposed to explain: It was to the gentleman's preference for the existing Government, and his willingness to adjourn *re infecta* and *sine die*, that he had alluded.]

Mr. Doddridge said, that he owed to the Committee an explanation of that. He had said that three results were before them. One was, that the whole of the Western counties would unanimously go against the new Constitution, and then the Government would continue as it now stood. This he should view as a grievance. But the Constitution by which the Eastern majority now governed the State, was one which they made not—it came into their hands in a fair, honest, and legitimate manner. But a Government they should create by the vote of a majority of this Convention, would be their own work; its oppression would be their own act and deed, and for that reason the people of the West would be less satisfied with such a Constitution than with that which now existed.

It ought not to be inferred that his views of the existing Constitution were at all changed, or that he was in the least degree better satisfied with it because he preferred it to a worse Constitution imposed by the members from the East. He would submit to it, because it was the established Government of the State: and so he should to any other, however objectionable in his view, which the people should enjoin. His loyalty would be the same, though his personal satisfaction might be less. But suppose, as a third result, that a majority of this House should send out a Constitution containing the principle of Federal numbers in both branches of the Legislature, and that the people should reject it: then, the excitement and dissatisfaction would be far greater than if the Convention should break up, having done nothing.

MR. COALTER now rose and said:

I had, in a *casual conversation* said, that I for one, would yield much in order to save to the country our ancient Right of Suffrage, and other great interests, deemed by me, essential to the preservation of the Commonwealth. And if this could be effected, I would be disposed, *for that purpose*, to accept the basis of Federal numbers in the Senate. I was afterwards informed that this *casual observation* had been stated, and was counted on, so far as one vote went, in relation to certain measures about to be proposed. I consequently considered it due to myself and to those gentlemen, to explain, *distinctly*, the extent to which, at that time, I had been disposed to go: at the same time apprising them, that propositions were now before us, which I might prefer.

My *sine qua non*, which have been received with so little *apparent* respect by the member from Rockbridge, were merely carrying into detail, on my part, what I had always asked to be favoured with on the part of others, as far as possible; that is to say, a view of the *whole bond*. I wanted, as to all *essential points*, to see the *quid* for the *quo*. I find, though, that this can't be done; and I beg pardon of both sides for the attempt. I fear, greatly fear, from the reception of my *simple* remarks—you may take the word *simple* in either sense—that no proposition, which one party may think reasonable, will be received by the other, except under an idea that some insult is intended.

I am now fearful too, that nothing can stay the hand of innovation except a *steady vote*. Nay, I am more than fearful, that if the gentlemen from the West could, by *one single vote*, fix the white basis in *both Houses*, and could carry every scheme of innovation which they have proposed, by a similar vote, they would think they were doing *God's service*, by giving such a Constitution to Virginia.

I have, therefore, given all I have said, or thought on that subject, to the idle winds.

I do this now, with the less regret, because I find that my notions on that subject are entirely unsatisfactory, *at this time*, and I have no doubt will so continue, to both sides of the House.

I do this, too, with still less regret, because I am *now* perfectly *confirmed*, in what I had before been satisfied of, that the *Federal basis* is the true and just basis on which the representation of the country ought to be established.

I ought not to *darken counsel*, by saying *one word* on this subject, after the argument of the member from Orange, (Mr. Madison.) That argument *must* and *will* carry conviction to the mind of every *cool-reflecting man*. It ought to be the *tabula in naufragio*, in the hands of every Virginia politician on this subject. It will be recollected, that I was not in the House to hear the arguments on this subject formerly delivered—nor have I seen them in print.

The *combined ratio*, too, is not so plain, and so easily understood as the Federal.

But I beg to be permitted to say, that this has *always* appeared to me to be a question about which there ought to be *no division here*. We have *two Governments and two Constitutions*; and we ought not to put them at *war* with each other. The same reason for the provision in the *one* applies to the *other*. This is not denied, so far as I have heard; but the one was a *compact*, and it is the *bond*. Let us be careful how we take from *that bond its just basis*, so ably maintained in the argument I have alluded to. Virginia may again be called upon to stand in the *breach*, and on this *very subject*, a Daniel may come to judgment, if we stand purely *on the bond*. We will then want that *panoply and shield of justice*, which has always covered the breast of Virginia in her hour of need.

The lower country then, in my opinion, are justly entitled to that as the basis in both Houses. They agree though to yield it so far, according to my understanding of the *principle* proposed in the resolutions, as to give to the people West of the Alleghany three or four members, and to the Valley district two or three members more than they would be entitled to on that basis; and take from the district between the Blue Ridge and Tide-water, three or four, and from the district below the head of Tide-water, two or three, to which they would be entitled, according to that principle. Now, when we recollect that, *in counting votes*, five or seven are taken from one side and given to the other, I think it must be manifest, that if this sacrifice, for the sake of peace, is not enough, it is in vain to offer any thing short of total surrender.

These calculations do not embrace the gain on one side, and loss on the other, in the Senate. And should they not be minutely accurate in other respects; yet I understood the *principle* on which the resolutions are founded must work an effect of *this kind*; and that to all time, according to the modification now indicated.

Assuming then, that the Federal number is the *correct basis*, this plain statement must satisfy every one of the generosity of this offer for a compromise.

The people of the West will only have to reconcile themselves to the *propriety* of that basis to be satisfied, that *ample justice* has been done them. The people here, who most conscientiously believe that this basis is just, and none more so than myself, have to reconcile to themselves the loss of these five or seven members more or less, to which they are entitled, and which may make a difference of ten or fourteen *on a vote* and to a probable future loss, in the same proportion, when the number of members is added to; to say nothing of a similar loss in the Senate.

They must find their consolation in this; that it was the price of peace and harmony.

I feel at present perfectly convinced, that *under existing circumstances*, this measure, so plain, and so easily understood by every one, will reconcile more people to it, on all sides of the *question and country*, than any other that it is *now* in our power to adopt.

The *principle* of the resolution, therefore, has my hearty approbation and cordial support.

Gentlemen have planted their standard—I *now* plant mine *firmly* in lower Virginia. I think she has *law, justice and sound policy* in her favor, and much of the *spirit of conciliation*.

Mr. Stanard, after recognizing with gratification the liberal spirit in which Mr. Cooke's remarks had been presented, went into a lengthy argument to shew, that the doctrine of the white population, being a fair exponent of the number of qualified voters, was false and delusive. Going on the basis of taxable inhabitants, the proportions of representation between the East and West, would be fifty Representatives for the West, and seventy for the East; whereas Mr. Cooke gave to the West fifty-six, and to the East sixty-four. Taxation gave the East a majority of twenty; Numbers, a majority of only eight. Yet, he would not take taxation as a rule, because the returns were liable to fraudulent misrepresentation, and taxation itself was under the control of the Legislature: but he would combine it with population and Federal number—the result would coincide almost exactly with that which would follow from

taking voters only. He urged the ground of principle as leading to the same basis of Representation in both Houses, and exposed the inconsistency of pleading for one House on the ground of principle, and yet surrendering the other, though the principle applied equally to both. He concluded by insisting, that a plan like that of Mr. Cooke did not deserve to be considered as a compromise. In the course of his Speech, Mr. S. referred to the tabular statement below.

Distribution of representation in the House of Delegates, consisting of one hundred and twenty members, and in a Senate of twenty-four members, upon the basis of white population exclusively, taking as the rule the Auditor's estimate of the population of 1829; and shewing the number of land-holders, and of those assessed to the payment of property taxes, which would be necessary to give one Representative in each House in the four great districts of the State; and the average amount of direct and indirect taxes assessed upon, and paid by, the constituents of each member in 1828:

DISTRICTS.	White population.	Number of land-holders.	Number of persons assessed for property tax.	Representation in the House of Delegates.	Representation in the Senate.	Land holders for each member of the H. of D.	Land holders for each Senator.	Tax payers for each Delegate.	Tax payers for each Senator.	Direct taxes for each Delegate.	Indirect taxes for each Delegate.	Direct taxes for each Senator.	Indirect taxes for each Senator.	All taxes paid for each Delegate.	All taxes paid for each Senator.
Western,	181384	20946	23323	31888	6377	656	3280	731	3655	8952	270	4660	1350	1059	5295
Valley,	138132	15114	16559	24295	4859	622	3110	681	3405	2168	402	10840	2010	2344	11720
Middle,	197222	23744	30419	34688	3937	783	3915	876	4380	4092	639	20460	3195	4331	21655
Tide-Water,	165523	23052	25724	29129	5825	963	4315	883	4415	4051	1364	20255	6820	4958	24790
		92856	96025												

Representation according to land-holders.

West,	-	-	-	46,816
East,	-	-	-	73,184

Representation on tax-payers on personal property.

West,	-	-	-	-	-	-	-	49,215
East,	-	-	-	-	-	-	-	70,785

Mr. Gordon now moved to amend the resolution, by substituting the following:
Resolved, That the representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge mountains, and nineteen East of those mountains.

"There shall be in the House of Delegates one hundred and twenty-six members; of whom, twenty-nine shall be elected from the district West of the Alleghany mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; thirty-nine from the Blue Ridge to the head of tide-water; and thirty-four thence below."

He wished to avoid the difficult question of future apportionments, thinking it better to leave that wholly unprovided for, than to adopt any plan that would be revolting to any large portion of the State.

On motion of Mr. Leigh, the Committee rose.

The amendment of Mr. Gordon was ordered to be printed; and then the House adjourned.

FRIDAY, DECEMBER 4, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Sykes of the Methodist Church.

Mr. Nicholas, from the Committee appointed to enquire on the subject of a place of meeting for the Convention, after the meeting of the Legislature, made the following report:

The Committee appointed to enquire into the expediency of providing other accommodations for the Convention, have performed that service, and submit the following report:

It is supposed, that as the Legislature will meet on Monday, it will not be practicable for the Convention to continue their sittings in the Hall of the House of Delegates. Acting under this impression, the Committee next turned its attention to various buildings in the City, but soon found that no other building would afford the necessary accommodation, but some one of the Churches in this City. Having examined the New Presbyterian Church on F street, the Committee are of opinion, that it is well suited to the object in view. Under this impression, they made appli-

cation to the Rev. Mr. Armstrong, and through him, to the Trustees of the Church, to ascertain whether it could be obtained. The Committee beg leave to state, that their application was received in a gratifying manner; and that the Trustees, as well as the Pastor of the Church, evinced the greatest promptitude and liberality, in affording the Convention any accommodation in their power. The subject was referred to a Committee of the Trustees of the Church, who, in a meeting with this Committee, expressed their willingness, that the Convention should have the use of their Church; but, with an understanding, that all the lower floor of the Church be appropriated to the use of the Convention, of ladies, and such persons as the President, under the established rules, may admit to seats on the first floor; the galleries, which are large and commodious, to be appropriated to visitors generally. The above arrangement the Trustees supposed to be calculated to guard the Church against injury; but, as the building is recently finished at a great expense to the congregation, the Trustees expect, that in case it sustain injury, it shall be returned by the Convention, or under its authority, in as good a condition as it may be received by it. The Trustees are also desirous that hucksters, and other venders, should not be admitted into the Church, or the anti-chamber to the same, for the purpose of selling or disposing of the articles in which they deal.

The Committee submit to the Convention, the propriety of adopting the following resolutions:

1. That the Convention agree to receive the use of the Presbyterian Church on F street, upon the terms stated in the report of their Committee, to have been proposed by the Trustees of said Church.

2. That the Secretary cause to be procured, and placed in the Presbyterian Church on F street, a suitable seat for the President, and such other fixtures as are necessary for the accommodation of the Convention.

A conversation ensued between Messrs. Nicholas, Mason, Doddridge, Goode, and Claytor, which resulted in laying the report for the present upon the table.—Ayes 47, Noes 44.

The Convention then went again into Committee of the Whole, Mr. Stanard in the Chair.

Mr. Gordon withdrew his amendment, and the question then being on the first resolution in the scheme proposed by Mr. Upshur,

Mr. Green suggested, that the question pending was not on the *adoption* of the clause, but on a motion to strike out the first word "Resolved."

The Chair reminded Mr. Green, that this, though it had been talked of in the discussion upon order, had not been expressly moved.

Mr. Johnson, expressing it to be his wish to get the sense of the House on the merits of the plan, made that motion.

A conversation in relation to the proper course to be pursued took place between Messrs. Johnson, Leigh, P. P. Barbour, Upshur, and Mercer, which resulted in putting the question on the motion to strike out the word "Resolved," (in effect, to destroy Mr. Upshur's proposition.)

MR. JOHNSON rose in support of his motion:

He said that he expected the Committee would consider the proposition on its merits—that they would direct their attention only to the principles, and consider the details as if modified to suit their own inclinations. He was sorry the propositions from his side of the House had not been met in that temper with which every attempt at conciliation ought to be received—and that this fault extended in some degree to both sides of the House. He was himself disposed to give gentlemen credit for the utmost sincerity and the best spirit, insomuch that, personally, he had some difficulty in choosing among the propositions, and if made umpire between the parties he should prefer those of Mr. Upshur or Mr. Leigh (which he considered substantially the same) as surpassing in simplicity and harmony of action. But he was not umpire, nor did those on his side agree with him in the opinion he had avowed. He preferred greatly the basis of qualified voters—but in that he had been sustained by neither side. He was now left to choose not what was most acceptable to him, but what would unite the greatest number of the members of the Convention.

Such a compromise ought to be sought as when fixed upon would unite not a bare negative, but a large portion of the minority also. He was led on these grounds, to prefer the proposition of Mr. Cooke.

He owned the force of the arguments addressed to him by the other side in favor of the Federal number—but it could not be made plain to his constituents. They had a deep-rooted antipathy to that ground of apportionment—and even if it was a prejudice, it was entitled to respect. The compromise of Mr. Cooke was more simple—more easily understood, and would, he believed, be more acceptable to the people. The only difference between the plans of Mr. Cooke and Mr. Upshur lay in this, that the same elements of compromise were separately applied to one, and applied in a combined form by the other: how then, would one be a compromise, and the other none?

The danger of taking Federal numbers as a true exponent of the number of qualified voters lay in this, that if the calculation proved erroneous, it could not be remedied, and it might turn out to have been irrevocably surrendered into the hands of a *minority*: if a minority get the ascendancy in one branch, they had it in both.

But, if Mr. Cooke's compromise were adopted, the Government would be surrendered neither to a majority nor a minority; it would be in the hands of a majority in one House and of a minority in the other. He insisted, that the veto of the Senate was an all-sufficient guaranty for the protection of the slave-property in the East.

In reply to Mr. Leigh's argument that the Senate would be overcome and a new Convention called to destroy its power, he said that this objection applied to every plan—a new Convention might overturn any system. He appealed to experience to shew, that the Senate had been able to resist the Lower House, but if the deliberate will of its constituents was expressed, it ought not to have power to resist that will. As to the constancy of the Senate being subdued by the Lower House refusing to send up necessary money bills and stopping the wheels of Government, it was what no Delegates annually elected would dare to do. He had seen the experiment made; the Senate did reject almost unanimously a money bill passed in the House by an overwhelming majority. The charge of aristocracy, while it might intimidate some men, would make others but the more firm; and besides, if weak nerves feared the charge here, would they not fear the opposite charge much more at home? Some trust must be reposed, if gentlemen would have any Representative Government at all: if not, they must go back to pure democracy or forward to absolute despotism. The objection as to a constant conflict between the two Houses was not without weight; but he had confidence in the discretion of both, and had besides seen the thing in practice, under the former organization of the Senate; and it produced no serious conflict or injury.

MR. MARSHALL rose and addressed the Chair nearly as follows:

Two propositions respecting the basis of Representation have divided this Convention almost equally. One party has supported the basis of white population alone, the other has supported a basis compounded of white population and taxation; or which is the same thing in its result, the basis of Federal numbers. The question has been discussed, until discussion has become useless. It has been argued, until argument is exhausted. We have now met on the ground of compromise. It is now no longer a question whether the one or the other shall be adopted entirely, but whether we shall, as a compromise, adopt a combination of the two, so as to unite the House on something which we may recommend to the people of Virginia, with a reasonable hope that it may be adopted.

Now, when on the subject of compromise, two propositions are again submitted to the Committee; one of them is, that the two principles originally proposed shall remain distinct; one of them constituting the basis of the House of Delegates, and the other of the Senate. The other proposition is, that the two principles shall be combined and made the basis of both Houses. This latter proposition presents the exact middle ground between white population exclusively, and the basis of white population combined with taxation, or what has been denominated the basis of Federal numbers.

The motion of the gentleman from Augusta, (Mr. Johnson) to strike out the word "Resolved," from the proposition offered by the gentleman from Northampton, (Mr. Upshur,) is intended to substitute for the combined ratio, which is the foundation of that gentleman's scheme, the proposition of the gentleman from Frederick, (Mr. Cooke,) which is to introduce white population exclusively as the basis of the House of Delegates, and white population and taxation combined as the basis of the Senate. This is the question now before the Committee.

We are engaged on the subject of compromise,—a compromise of principles which neither is willing to surrender. The very term implies mutual concession. Some concession must be made on both sides, but the quantum to be made by each must depend on the relative situation of the parties, and this must be considered before a right judgment can be formed on the subject. Let us enquire, then, what is the real situation of the parties on this question. On this enquiry will depend the reasonableness of any compromise that may be proposed.

The past discussion shows conclusively the sincerity with which each principle has been supported. There can be no doubt of the honest conviction of each side, that its pretensions are fair and just. The claims of both are sustained with equal sincerity, and an equally honest conviction, that their own principle is correct, and the adversary principle is unwise and incorrect. On the subject of principle, nothing can be added, no advantage can be claimed by either side; for, no doubt can be entertained of the sincerity of either. To attempt now to throw considerations of principle into either scale, is to add fuel to a flame which it is our purpose to extinguish. We must lose sight of the situation of parties and state of opinion, if we make this attempt.

What is that situation?

A question has been taken in the Committee on the proposition first submitted to us, and it has been carried by a majority of two. Is it possible under existing cir-

cumstances, that any confidence can be reposed in this decision? Can either the majority or minority feel any confidence that the same question will hereafter be again decided precisely in the same manner? Can we be blind to the actual working of public opinion? Do not gentlemen believe it to be more probable, that at least some one of the members of this majority, may change his opinion and thus leave the House equally divided? Is it not even probable that a still greater change may take place, so as to place the present scanty majority, with the same paucity of numbers on the other side? Can any gentleman be confident how this question will be ultimately decided? None of us can be certain that its result in the House will be the same that it has been in Committee.

But let us decide one way or the other; if the majority shall be so small, if the opinions of the Convention shall be so nearly balanced, the Constitution will go forth to the people, deriving very little additional weight from the recommendation of this body. The majority and minority will have almost equal weight, and the Constitution will rest on itself. Is it possible to conceal from ourselves, that the powerful arguments of the minority conveyed to the people through the Press, supported by the co-operating interest of a large district of country whose weight has been placed in the opposite scale, may produce great effect? The endeavor would be vain to conceal the fact, that in a part of the Eastern country—that lying upon and South of James river near the Blue Ridge, there are interests which must and will operate with great force, unless human nature shall cease to be what it has been in all time. It is impossible to say what may be the influence on those interests abroad, though they may exert none on the members of this Convention. It is impossible to say, how far they may affect the adoption or rejection of the Constitution. But it is by no means certain, that this change in public opinion will not be felt in this body also. Admitting gentlemen to retain their theories—theories which they maintain with perfect sincerity, still there exists another theory equally Republican, and which they equally respect, the theory that it is the duty of a Representative to speak the will of his constituents. We cannot say how far this may carry gentlemen. Neither can we say what will be the ultimate decision of this House or of the people.

Taking this view of the state of parties, it is manifest that to obtain a just compromise, concession must not only be mutual—it must be equal also. The claims of the parties are the same. Each ought to concede to the other as much as he demands from that other, and thus meet on middle ground. There can be no hope that either will yield more than it gets in return.

What is that middle ground?

One party proposes that the House of Delegates shall be formed on the basis of white population exclusively, and the Senate on the mixed basis of white population and taxation, or on the Federal numbers. The other party proposes that the white population shall be combined with Federal numbers, and shall, mixed in equal proportions, form the basis of Representation in both Houses. This last proposition must be equal. All feel it to be equal. If the two principles are combined exactly, and thus combined, form the basis of both Houses, the compromise must be perfectly equal.

Is the other proposition equal? I ask the gentlemen who make it, if they think it so?

The party in favor of the compound basis in both Houses have declared their conviction, that there is no equality in the proposition. They at least think it unequal. How can they accede to a proposition as a compromise which they firmly believe to be unequal? Do gentlemen of the opposite party think it equal? If they do, why refuse to take what they offer to us?

They consent that the Senate shall be founded on the mixed basis, and the House of Delegates on the white basis. If this be equality, why will they not take the Senate? There can be only one reason for rejecting it—they think the proposition unequal. If the Senate would protect the East, will it not protect the West also? If the proposition is equal when the Senate is tendered by them to us, is it not equal when tendered by us to them? If it is equal, it must be a matter of absolute indifference to which party the Senate is assigned. If a difficulty arises, it is because the proposition is unequal; and if it be unequal, can gentlemen believe that it will be accepted? Ought they to wish it?

After the warm language (to use the mildest phrase) which has been mingled with argument on both sides, I heard with inexpressible satisfaction, propositions for compromise proposed by both parties in the language of conciliation. I hailed these auspicious appearances with as much joy, as the inhabitant of the polar regions hails the re-appearance of the sun after his long absence of six tedious months. Can these appearances prove fallacious? Is it a meteor we have seen and mistaken for that splendid luminary which dispenses light and gladness throughout creation? It must be so, if we cannot meet on equal ground. If we cannot meet on the line that divides us equally, then take the hand of friendship, and make an equal compromise; it is vain to hope that any compromise can be made.

Mr. Mercer, after expressing the reluctance which he felt at all times to trespass on the time of the House, and the peculiar embarrassment under which he now laboured, referred to the feelings of good will toward every part of Virginia, which he had brought with him to the Convention, and their still undiminished force. He hoped the asperities of all parties had nearly subsided, and that the Committee had attained that state of tranquillity, so favourable to the exercise of reason. He then expressed toward Judge Marshall a filial respect and veneration not surpassed by the ties which had bound him to a natural parent, long since returned to the dust. Yet he was unable to meet his proposition. He thought complete justice had not been done to their side of the question. All their opponents had conceded that if equal numbers always possessed equal wealth, numbers might be urged as a fair exponent of political power: but the unequal distribution of property rendering this impossible, some protection was needed for it. But did gentlemen ever claim any thing more than enough of political power? He adverted to the course which had been pursued in the Legislative Committee—the majority which had been for the white basis, and the vote of Mr. Madison in its favour—the subsequent majority of two in the House. Under these circumstances, they might have at once decided on that principle, and after arranging the Right of Suffrage, sent both to the people. Then they should have had a Senate based on white population, (arranged in 1826,) and a House of Delegates on the same basis. Yet they had agreed to concede so far, as to introduce the principle of the Federal number in the Senate. Hence he argued the spirit of forbearance which had governed the West. He objected to insisting on a security beyond the danger which called for it—and from the examples of North and South Carolina, inferred that no fears were to be entertained of strife between the two Houses. He went into a statistical statement to shew that the results of white population, and qualified voters were in substance the same.

He had risen to shew, that the majority had not been claimed of them which Mr. Marshall said ought to be allowed, only as a defensive guard; while Mr. Madison thought that security would be given by adopting the whole basis in one House, and the Federal numbers in the other. But now, a principle of exact equality and not merely of defence and protection, was demanded.

MR. BALDWIN addressed the Chair:

Mr. Chairman: I certainly should not trespass upon the attention of the Committee, especially at this late period of the debate, but for one consideration. Having on a former occasion suggested a plan of compromise substantially the same with that now offered by the gentleman from Frederick. (Mr. Cooke,) and the merits of which must be weighed in determining the present question, I feel it to be a duty which I owe to myself and my constituents, that the motives for my conduct should be distinctly understood. There are some gentlemen on this floor, who, entertaining an enthusiastic, and no doubt, honest attachment to the existing Constitution, do not seem disposed to view the course pursued by their adversaries with sufficient indulgence. Hence we have had charges which it becomes those assailed to repel—charges of such a nature, as may be best repelled by a free and candid exposition of our motives and conduct.

Though I do not profess, Sir, to have made politics my study, or to have had much experience in public affairs, there is one truth deeply impressed on my mind, which cannot escape the most casual observer. Whoever acts the part of a statesman, however humble, or however distinguished, is compelled, if he be honest, to make great sacrifices. On this occasion, I feel myself constrained by a sense of duty to make a sacrifice of opinion, of feeling, even of consistency itself. It shall be made, freely made—upon the altar of my country, without hesitating a moment to consider the consequences personal to myself. My only answer, therefore, to the charge of inconsistency is, that I confess and justify it. What is my justification? The peace, the happiness, the safety of Virginia. Mr. Chairman, this is a momentous crisis in the destiny of our State. In this Assembly, convened by the highest exercise of sovereign power, the waves of controversy have risen to a great height—they have extended beyond us in every direction, and threaten to overwhelm the whole Commonwealth. We are now to determine whether we shall pour oil upon those waves, or permit the storm to rage with reckless and resistless fury. Is this a time to indulge the pride of opinion, the spirit of party, the love of consistency; or does the occasion demand the influence of widely different and far higher motives?

It must now be obvious to all, that if this disagreeable and dangerous controversy is to be happily adjusted, the only practicable means is that of compromise. The parties on this floor may be regarded as equally balanced. We have a majority of two in favour of the white basis in the House of Delegates, but it is well understood that there is an equal majority opposed to a similar basis in the Senate. If both parties should remain inflexible, what hope is there of a profitable termination of our labours? Is the contest to be continued throughout the whole of the session, and upon all the details of the subject? Is this question of relative political power, to

mingle itself with, and influence the consideration and decision of every proposed amendment in the Constitution? Shall we exhaust our own patience and that of the people, and finally return home, not the harbingers of reconciliation and peace, but of interminable discord and hatred?

These considerations have forced upon my mind the necessity of compromise, and I have yielded to that necessity, though not without great repugnance and difficulty. I act upon my own responsibility, without pledging or committing my constituents in the slightest degree. They will decide for themselves; and are capable of estimating the magnitude of the proposed concession on their part, and of the mischiefs which it is intended to obviate.

I have been much surprised to hear it repeatedly asserted, that we have shewn no spirit of conciliation, on our part, and no disposition to meet the adverse party on middle ground. What, Sir, was the original demand of the Western members, and those associated with them? They contended for the basis of white population in both branches of the Legislature, as required by justice, sound policy, and the fundamental principles of our republican system. They were vigorously resisted, on the ground, that property would be rendered insecure, by looking only to numbers, in the apportionment of representation. It was not denied, but on the contrary admitted by several of the Eastern members, that as a general rule, the majority ought to have the ascendancy in a Republican Government. But the conflicting interests existing in Virginia, were appealed to as justifying a departure from that rule. I ask, if security for property was not the great and only object declared by those opposed to the basis of white population; and if that security, by means of representation, is all that is desired, whether it be not furnished by the concession of Federal numbers in the Senate?

We have been charged at one moment with inconsistency; and at another, with inflexible pertinacity. These imputations may be retorted, with much more propriety, against those, from whom they have proceeded. Representation, according to Federal numbers, was not, in the first instance, demanded in this Assembly by our adversaries. It was not proposed, until after strength had been gained here, and with the people, by the powerful efforts made to excite alarms for the security of property. At first, nothing more than the mixed basis of white population and taxation was required. I think I may confidently assert, that a compromise might have been had early in the session, by yielding the mixed basis in the Senate—at all events, by yielding the basis of taxation in that branch of the Legislature. The latter proposition, it will be recollected, was offered as a scheme of compromise, by the gentleman from Fauquier, (Mr. Scott.)

But, even if the Federal numbers for both branches of the Legislature had been originally demanded on this floor, we surely meet our adversaries on middle ground when we offer to yield that basis in the Senate, and insist only upon representation according to white population in the House of Delegates. Gentlemen must not regard us as conceding nothing on our part, because they choose to consider our pretensions as dangerous or visionary. They will gain nothing by treating all propositions for alterations of the existing system, as the wild schemes of revolutionists and mad reformers. Let every proposition be examined upon its own merits, and adopted, if wise, or rejected, if mischievous. For myself, I can freely declare that there are few members of this Assembly who estimate the existing Constitution more highly than I do. So far from having any thirst for innovation, I have been uniformly opposed to the call of a Convention, believing the practical operation of the Government to have been substantially good, and fearing to hazard blessings attained in search of others, perhaps unattainable. I am not disposed, however, to shut my eyes against the defects of the present Constitution; and there is surely none so glaring as the inequality of representation. On this subject, I would ask if we are not all reformers? The existing plan of county representation has no advocates in this Convention—no one here will raise his voice in favour of a system which gives to one-third of the people the election of one-half the representatives in the most numerous branch of the Legislature; which places the smallest county on an equal footing as regards political power with others ten times superior in population, territory and wealth. Even my worthy and eloquent friend from Charles City, (Mr. Tyler,) whose constituents have so much reason to be partial to the present system, felt himself compelled on yesterday to surrender the undue advantages, which they now enjoy, to what he considers the common good.

It being conceded on all hands, that the present plan of Representation is defective, and ought to be reformed, the question has of course arisen, in what mode the object ought to be effected? A question which necessarily involves the principles by which we are to be governed. I came here, Sir, with the most perfect conviction, which still remains unshaken, that Representation ought to be apportioned, with all practicable equality, throughout the Commonwealth, amongst the qualified voters; and that no regard to relative wealth or other considerations, can justify the subject-

tion of the majority to the power and dominion of the minority. In common with the other members from the Western part of the State, I have been induced, for the reasons already suggested, and in the hope of quieting the public mind, now so greatly agitated, to make a concession, which it was hoped would be satisfactory to most of our Eastern brethren. The compromise proposed by us, while it does not surrender the principles for which we have contended, furnishes all the security, so much insisted upon, which can be derived from the representation of property. On the one hand, while the will of the majority will be fully and fairly expressed in the most popular branch of the Legislature, the basis of Federal numbers in the Senate will, if any plan of property Representation can, present a barrier against incursions upon the rights of property, and the exaction of partial or excessive contributions.

But it has been urged, that if the same basis of Representation be not adopted for both branches of the Legislature, there will be a continual warfare between the two Houses—that the Senate will not be able to withstand the assaults of the more numerous body, and will be rendered odious with the people by the cry of aristocracy. My friend and colleague (Mr. Johnson) in his argument just delivered, has showed very clearly the efficiency heretofore of the controlling power in the Senate. Will that efficiency be destroyed by giving to the Senate the basis of Federal numbers? What, then, would be the effect of introducing that basis, either in the whole, or in part, into both branches of the Legislature? Sir, I have uniformly thought and declared, that the scheme of property Representation, instead of affording the protection so anxiously desired, would only tend to impair the security of property. It matters not whether you confine the principle to one House, or infuse it into both; you will equally excite the hostility of those whose political power is thereby diminished. The people are not blind—they will see and understand the practical operation of the principle, and it will not be more disguised by extending it to both branches, than by communicating it to one only. The cry of aristocracy might be raised by demagogues in either case, with the same force and effect.

Mr. Chairman, there can be no hope of calling back gentlemen to a calm and dispassionate consideration of the evil consequences to which their principles lead. They cannot be persuaded, that the best security for property is to be found in the moral sense and intelligence of the community; in the natural and legitimate influence of wealth, talents and learning; in the common interest which all classes have in a just and wholesome course of legislation. But while they ask for power as the only adequate means of security, do they not perceive how odious it will become if extended beyond the only plausible object for which it can be demanded? The majority may be reconciled to a restraining power in the least numerous and most discreet branch of the Legislature; a power, which will not dictate, but merely protect; but can they be ever reconciled to a surrender of all the powers of Government for ages to come, into the hands of the minority?

It is far, Sir, from my desire, that the protection conceded by the compromise, which we propose, should prove in any respect illusory. Though extremely averse to the concession, yet having once determined upon it, I am prepared, so far as I am concerned, to carry it into effect, fairly, candidly and cheerfully; without chaffering or higgling about petty details. Let the Senate be so organized as to remove all reasonable objections from the other side, to its efficiency in resisting any apprehended invasions by the Lower House, of the rights of property. Thus far I am willing to go, in a spirit of conciliation, and for the sake of peace; and upon the supposition that both parties are equally confident in the justice of their original demands, I am at a loss to perceive how the terms which we offer can be regarded as inadequate.

It was urged, Mr. Chairman, by yourself on yesterday, by way of objection to our terms of compromise, that a fair deduction from our own principles would not give the whole white population as the proper basis for the House of Delegates, but only the qualified voters, who alone enjoy the rights of sovereignty. You endeavoured to shew that the Western people, according to the relative proportions of qualified voters, would gain less, than by assuming the whole white population as the standard. And hence you inferred, that instead of requiring the basis of white population for the House of Delegates, we ought to be contented with that of qualified voters. Without going into any examination of your premises, I cannot admit the correctness of your conclusion. I would be perfectly satisfied myself with the basis of qualified voters for both branches of the Legislature; but who of the opposite party would be willing to adopt it? And where would be the propriety of introducing it into the House of Delegates, if Federal numbers should be the rule for the Senate? You do not propose to make any deduction from the Federal numbers, embracing all the whites and three-fifths of all other persons; then why insist, that any deduction should be made from the basis of white population?

If the terms of compromise which we propose be not unjust nor unequal as regards the adverse party, then why not adopt them? Why do gentlemen insist upon a plan of Representation inexpressibly odious to the Western people? We have been told

repeatedly, with great propriety, in the course of our debates, that in the constructing our fundamental law, not only the rights and interests, but even the prejudices of the people ought to be consulted. We ought not to wound that pride of character, without which, the gentleman from Chesterfield will agree with me, there can be nothing estimable. I do most heartily wish that by any exertion of my humble talents, I could impress upon this Committee what are the feelings of the Western people on this subject. I am sure that they are not correctly understood by many persons in this body; and if properly estimated, would lead to a more calm and deliberate consideration of the question. The Eastern people demand, as we are told, only security—not for their personal rights, but for their property; and it is granted, by conceding Representation according to Federal numbers in the Senate. They would sustain no pangs of humiliation by yielding to the basis of white population in the House of Delegates; and would soon become reconciled to the compromise. What do the Western people demand? That equal Representation which is to give protection not only to their property, but to their persons; and place them upon an equality with the other free-men of the Commonwealth. Let the principle of Federal numbers, in whatever degree, be introduced into both Houses, and the hardy yeomanry of the West will never be satisfied. They can never consent to be put upon a footing, in the apportionment of political power, with the slave who moves and toils at the command of his master. They will not, cannot, dare not submit to it. They dare not so degrade themselves in their own eyes—in the eyes of the whole world—even in the eyes of their brethren who now require the concession.

And here, Mr. Chairman, I must notice a topic of the gravest character, which has been several times brought to our view, by Eastern members, in the course of debate. I mean a separation of the State—at one time gently insinuated—at another wrapt up in beautiful rhetorical language, and finally expressed in what has been emphatically called plain old English. I am not disposed, Sir, to regard such menaces, because I am aware of the extremities of intellectual warfare, and can estimate the effervescence of momentary excitement. They would not be impressed upon my mind, but for a corresponding sentiment, which I have reason to believe, prevails amongst the Western people. I do not say that if slave Representation should be forced upon them, they will raise the standard of rebellion, or in any wise resist the constituted authorities. Far from it. But within the pale of the Constitution and laws, they will carry their opposition to the utmost limit; and the members of this Committee can estimate the feelings of hostility by which it will be accompanied. The final result will be a separation of the State. No one can doubt that if such an event should be pervasively, though peaceably sought, by a large portion of the State, it would be ultimately conceded.

I beg, Sir, to be distinctly understood. There is no one in this Committee, to whom the idea of such a separation is more abhorrent than myself. I believe there is no man here, who wishes separation for its own sake, or who could contemplate it for a moment, except as a refuge from greater evils. If there were any such man, I would say to him, in the language of an immortal bard,

“If thou do'st consent
To this most cruel act, do but despair;
And if thou want'st a cord, the smallest thread
That spider ever twisted from her womb,
Will serve to strangle thee.”

We should look forward to such a calamity, only to deprecate and avoid it. Surely, it will not—must not be. Separate Virginia! Shall she be shorn of her strength, her influence, and her glory? Shall her voice of command, of persuasion, and reproof, be no longer heard in the National Councils? Shall she no more be looked up to as the guide of the strong, the guardian of the weak, and the protector of the oppressed? Break in twain the most precious jewel, and the separated parts are comparatively worthless. Divide Virginia, and both the East and the West will sink into insignificance, neglect and contempt.

I rose, Mr. Chairman, to make but a few remarks, and have detained the Committee longer than I contemplated. I am thankful for the indulgent attention with which I have been heard, and regret my inability to do justice to the subject. I would to God, that for this single occasion only, I could utter my feelings in

“Thoughts that breathe, and words that burn.”

I would kindle a flame, which should find an altar in every heart, which should burn to ashes the prejudices of the hour, and the petty interests of the day, and throw upon our path of duty a strong and steady light, directing us forward to the permanent welfare, safety and honour of Virginia.

Mr. Leigh, after noticing some of Mr. B's statements, went on to reply to Mr. Johnson—and complained, that they were constantly called upon to respect the feelings of the West, and to make a Constitution that should be acceptable to the West, but nobody seemed to consider the feelings of the East at all, or to care whether the Constitution was acceptable to the East or not. If gentlemen asked for sympathy, let them shew it—if they insisted, that their theoretical claims should be considered, let the practical claims of the East be considered also. He insisted on the prejudices which would assail a Senate differently constituted from the House of Delegates—it would be branded in its very birth with “Aristocracy” upon its front—it would be sent forth with the cry of “mad-dog,” to make its way among the people. He strongly objected to the interpretation which Mr. Mercer had put upon Mr. Madison's speech, as advising the Committee to accept, by way of compromise, different bases in the two Houses. Did Mr. M. forget, that that gentleman had twice, in Committee, voted against that proposition for a white basis in the House of Delegates? On the question of Federal numbers, they had enjoyed the happiness and honour of receiving his vote. He differed from Mr. M. entirely, as to the tenor of Mr. Madison's speech in the Committee, and stated what was his understanding of the substance of it. He commented with severity on Mr. M's profession of filial respect for Mr. Marshall, accompanied by an entire disregard of that gentleman's advice, and insisted on this as one illustration of the truth of his own remark, that in this country, sons were always wiser than their fathers. From whatever other quarter the spirit of conciliation had proceeded, he never expected to see one scintilla of it from him.

Mr. Mercer replied, that he had not intended to misrepresent the argument of Mr. Madison. He had understood that gentleman as recommending Federal numbers, only so far as they would operate as a protection to the peculiar property of the East. With regard to the venerable gentleman from Richmond, he had had the happiness of knowing him for thirty years. That gentleman was his friend and his father's friend. No remarks of the gentleman from Chesterfield would, he trusted, ever be able to sever that bond; and he cared for no other consequence that might follow them.

Mr. Johnson said, when he wished to allay irritated feelings, he had found that the best way was never to allude to them. The certain effect of a different course, was rather to exasperate than allay the irritation.

In reply to a personal appeal of Mr. Leigh to himself, he bore testimony, that in his opinion, the charge of aristocracy brought against the existing Constitution, was wholly unfounded; but, he did not believe with Mr. L., that that charge had been the main cause of calling this Convention. It had been used indeed, as a powerful weapon in the hands of men, who felt that they were deprived of their just rights. The cry of mad-dog had been raised against the present Senate; but, they had survived the cry, and had had the pleasure of hearing blessings sung by the same lips. The Senates of Massachusetts, New Hampshire, and of the United States, had all been quoted in this very light, by gentlemen themselves; and the Senate of Maryland was an example in point, to shew that a small body could resist with firmness, and maintain the stand it had taken.

In reply to Mr. M. he urged this consideration, that that could not be called middle ground, where one party surrendered all they had been contending for, to the other. Now, the West had for eight weeks been contending, to secure themselves from a system, which placed the power of the State in the hands of a *minority*; but, the principle of that gentleman's compromise, was to propose a principle which confessedly did this very thing in both branches of the Legislature. To yield this, was to yield the whole they had been contending for. The West had set out with contending, that the power should reside with the majority in both branches. The East contended, that it should remain with a minority in both branches. If the mixed basis should be adopted in both Houses, the power would be in a minority in both Houses. Was this compromise? Or, was it not complete and entire surrender?

The question was now taken on Mr. Johnson's motion to strike out, and the votes stood—Ayes 48, Noes 47. The Chair voting in the negative, made a tie; and so the motion was negatived.

So the Committee refused to strike out the word “Resolved,” in the first clause of Mr. Upshur's proposition for compromise, thereby leaving it open for amendments.

[On this motion, Mr. Monroe voted Aye: Messrs. Madison, Marshall, and Pleasants, No.]

Mr. Upshur, with a view to test the sense of the Committee on the question, whether the three ratios in his plan should be retained, or only two of them, moved to amend the proposition, by striking therefrom the second of the ratios, viz: “white population and taxation combined.”

The motion prevailed, and the words were stricken out.

Mr. Upshur moved a further amendment, changing the number of Senators from “thirty” to “thirty-two.”

This motion prevailed—Ayes 53.

[Messrs. Madison, Monroe, Marshall and Giles, Aye.]

Mr. Powell said, that since the question of the basis seemed now decided, there could be no reason for extending the number of the Senate; and he therefore moved to amend, by striking out "thirty-two," and inserting "twenty-four."

The question being taken, the motion was negatived—Ayes 46, Noes 48.

[Mr. Madison, Aye: Messrs. Monroe, Marshall and Giles, No.]

Mr. Scott, considering it impossible at present to fix on any permanent future principle of apportionment, which would be generally acceptable, moved to strike out the third clause of Mr. Upshur's proposition.

The motion was opposed by Messrs. Cooke and Upshur, as going to undo all that had been done, and lead only to the call of a new Convention. If the principle was fair now, it would be as fair always. To destroy its permanence, would be to impair the ground of compromise.

Mr. Scott said, from the equal vote in striking out Mr. Upshur's proposition, it was plain that the scheme, in its present form, was not acceptable to a majority of the House. He had made the motion, expecting that some gentleman would substitute another scheme of future apportionment.

The question being taken, it was negatived—Ayes 31, Noes not counted.

Mr. Mercer now moved to amend Mr. Upshur's proposition, by substituting the following:

"Representation in the Senate shall be based on the whole number of free persons, including those bound to service for a term of years, and excluding indians not taxed, and adding to the aforesaid number of free persons, three-fifths of all other persons: and the Senate shall consist of a number not exceeding , and its term of service and classification remain as at present."

Mr. Leigh said, the same question had in substance been decided already. He called upon all who were in favour of seeing the two Houses harmonious in their organization, to oppose the amendment.

Mr. Powell asked the mover, if this was not word for word the same proposition once moved by the gentleman from Goochland, (Mr. Pleasants?)

Mr. Mercer replied in the affirmative.

After some conversation as to the effect of the motion between Messrs. Mercer, P. P. Barbour, Johnson and Leigh,

Mr. Pleasants announced his determination to vote against the amendment. He adverted to his peculiar situation (in relation to his district,) and went into a history of the course of the debate, and then declared his preference to the plan of county Representation. If he could get such a plan, graduated to suit his views of propriety, he would vote for it. He did not hold himself bound by any former vote, and had so stated at the time. Could a good system of county Representation be engrafted in the proposition he had formerly offered, and which was now offered by Mr. Mercer, he would support it. He did not fully know the sentiments of his constituents—and he believed his course would, in these circumstances, be approved.

Mr. Mercer disclaimed any intention of involving the gentleman in any difficulty.

Mr. P. said, he did not believe the gentleman could involve him in any difficulty whatever—He had no fears on that score.

Mr. Mercer explained the reasons at some length, which had induced him to move the amendment. The Committee had arrived at that point, when such a question ought to be prescribed. They had got to the end of one path—he now presented to them another. He expressed his hope of Mr. Marshall's vote, after what had fallen from him in relation to it. He had hoped for the gentleman's from Goochland also, which would have made the vote stand 50 to 46. The proposition of Mr. Upshur was for a county Representation, and the amendment had no other in view. He hoped, therefore, for the vote of Mr. Pleasants.

Mr. Gordon moved to amend Mr. Mercer's amendment.

Mr. Johnson moved, that the Committee rise. The motion was negatived—Ayes 42, Noes 50.

Mr. Johnson suggested to Mr. Mercer the propriety of withdrawing his amendment. Let Mr. Upshur's be first modified and amended by its friends. It was not proper to press the gentleman from Goochland, under his present circumstances.

Mr. Mercer consented to withdraw it.

Mr. Leigh said it was manifest, gentlemen thought that by holding out, some of their side would go over.

Mr. Johnson distinctly avowed that to be the ground on which he suggested the delay.

Mr. Leigh said, this would shew gentlemen what effect their supposed pledge had had. He knew, that those gentlemen would not be influenced by any thing he could say, but would act for themselves.

He then moved, that the Committee rise: the motion prevailed: (it was now near 4 o'clock.) The Committee then rose, and thereupon the House adjourned.

SATURDAY, DECEMBER 5, 1820.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Parks, of the Methodist Church.

Mr. Gordon moved, that when the Convention adjourned, it adjourn to meet on Monday at 1 o'clock.

The motion gave rise to desultory conversation on the subject of a place of meeting for the Convention, which resulted in a refusal to take up the report of the Committee on that subject, and an agreement to meet on Monday at 2 o'clock, (allowing time for the Legislature to convene and get through its morning business.)

The Convention then went again into Committee of the Whole, Mr. P. P. Barbour in the Chair.

And the question being on Mr. Gordon's amendment to the resolution of Mr. Upshur,

Mr. Gordon modified it, so as to read as follows:

"*Resolved*, That the representation of the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge of Mountains, and nineteen East of those Mountains.

"There shall be in the House of Delegates one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district West of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of Tide-water, and thirty-four thence below."

Mr. Powell gave notice, that in case the amendment of Mr. Gordon should be rejected, he would offer another, which he read, and which went, in substance, to give to the Senate the power to amend revenue bills; with a proviso, that in case of a disagreement between the two Houses on such a bill, the revenue, as enacted for the previous year, should continue.

Mr. Morris said, that this long, and to many, wearisome discussion, must have convinced all of one fact, a fact so evident, that none could shut their eyes against it; that, however anxious the Committee might be so to apportion the future representation of the State as to put an end to the confessed inequality which now existed, no general principle that could be proposed, would obtain the vote of such a majority as that it might be carried with any confidence to their constituents. Yet all were agreed, that the obtaining of this object formed one of the leading causes, which had led to the call of this Convention: it was certainly one of the prime considerations, which had induced the people to vote in its favour. He professed himself desirous to establish some rule, on this subject, which might apply not merely to the present moment, but to all future time: but he was satisfied, that, situated as the Convention now was, no permanent arrangement, looking to futurity, could be agreed upon. But the hopelessness of this was no reason why some present arrangement ought not to be made. If they could not do all the good they desired, let them do all that was in their power. The result of the calculations on both sides shewed, that a House of Delegates constructed on the principle of qualified voters, and one on the compound basis of population and property, would not differ by more than three, perhaps only by two members. As to the objection that unless some permanent rule of apportionment should be settled, discontent would again arise and a new Convention be called, he thought the experience the people had had on the present occasion was a pretty good security against any speedy resort to that expedient. But, if such Convention was to assemble, the future rule of apportionment might be left to them. Yet, he was willing to lend his aid in the effort to fix it now. His own preference was for the Federal number as a just medium between the ratios of population and taxation. He repelled the charge of aristocracy made against this arrangement, by appealing to the principles and virtues of the founders of the Constitution, and the three venerable men, (two of whom had fought in defence of liberty,) who had given it their sanction on the present occasion. He never could be made to believe that such men were the friends of aristocracy. But, if the time for carrying such a principle as the basis of both Houses was past, still he was in favour of doing what might allay discontents for the present. He was utterly opposed to basing the two Houses on different ratios of representation, as leading to discord and providing opposite and conflicting influences which must forever keep the vessel of State from the harbour of the public good. He had no belief in the doctrines so commonly maintained by writers, and advocated here, of the efficacy of checks and balances. In a Government like that of Great Britain, where the source of power was not in the people, but in a monarch, claiming it by divine right and hereditary descent, they might be necessary and were certainly operative; but in a Government like ours, none of the arguments in their favour applied. The true check here was the distribution of power into many hands. This principle would be met by placing the power of Legislation in two different branches—without making the two Houses antagonists. The Consti-

tution provided a Legislative, Executive and Judicial Department, not that they might oppose each other, but act in harmony. It was not the duty of the Executive to oppose the execution of the Legislative will, but to comply with it: nor was it the excellence of the Judiciary to give an interpretation to the laws, opposite to the purpose for which they were enacted, but conformable to it. In support of the general views he had given, he referred to the authority of the late Mr. Taylor of Caroline. He appealed also to what Mr. Johnson had admitted on the subject of a want of harmonious action between the two branches of the Legislature, constituted in so different a manner as was proposed, and his personal preference of Mr. Upshur's plan of compromise to that of Mr. Cooke. He concluded by expressing his determination to vote for Mr. Gordon's amendment, reserving himself as to its details, which he had not examined.

Mr. Stanard expressed his view of the proposition to be the same, with that just expressed, and his determination to vote for it. It corresponded with a proposition mentioned by himself to the Committee three weeks since. He did not mean to pledge himself to all the details, in which he thought there were some errors; but he wished to take this step to remove existing difficulties, and if nothing more could be done, leave the future apportionment to be settled hereafter.

Mr. Cooke rose to compare the details of the two plans now before the Committee, viz: the schemes of Messrs. Upshur and Gordon. According to these plans,

By Mr. Gordon's, Senate of 32,	13 West,	19 East.
Mr. Upshur's do.	14	18

Here is a difference in favour of the West, of 1-3d part of the whole Senate.

By Mr. Gordon's House of Delegates, of 120,	50 West,	70 East.
Mr. Upshur's do	48	72

Thus the plan of Mr. Gordon is preferable to that of Mr. Upshur, one-sixth; thus in the two Houses, the difference between the two plans is very inconsiderable. But in another respect there is a very important difference. That of Mr. U. contains a principle of future apportionment, a principle of vitality and self-preservation, which Mr. G's entirely wants. He would therefore say it with all due respect, that Mr. G's was a mere shift and temporary expedient, to get clear of present embarrassments. Much as he desired to support any plan which came from that quarter—from a gentleman to whom he had been so much indebted as a faithful friend of reform—yet he could not support a plan which settled no principle, and was merely a temporary patch-work of a Constitution, to be torn to pieces some five or seven years hence by the agitators and Jacobins of that day: and this, he said, was with him a vital objection, and such a one as would induce the people of the West, to a man, to reject any such Constitution.

Mr. Gordon was sorry to hear the gentleman from Frederick apply the word "shift," to his proposition, though from the expression of personal kindness to himself afterwards, he did not suppose the gentleman meant it in an offensive sense. [Mr. Cooke said, *certainly not*.] Mr. Gordon went on to say, that he had sat a silent spectator of the debates on this question, but it seemed to be evident that the Convention could not agree upon any future apportionment. What then were we to do? Sit here in *equilibrio*, doing nothing—or shall we return home, with a blank piece of paper? He had considered this subject well: he was for repositing the Constitution upon its ancient foundations—for redressing the inequalities of the representation—and leaving it to the aged and the wise men of the land to arrange some other Constitution. But he could not consent to sit here, waiting till some scheme should be supported by one or two votes thrown into the scale, and making a meagre majority; then sending out a Constitution, so made, and carrying discord and confusion among the good people of Virginia. But, if gentlemen on both sides could agree on any future apportionment, by a large majority, he for one would be most happy to support it.

Mr. Upshur briefly stated the reasons why he should vote for the amendment of Mr. Gordon. The distribution of power for the *present*, was nearly the same as that in his own proposition, and would at all events, disembarass the subject of many difficulties. As to the question of future apportionment, the adoption of the amendment would not preclude any arrangements for that object, and he declared it to be his intention, should the proposition carry, to move as an amendment, the same provision for future apportionment, as had formed a part of his own scheme.

Mr. Doddridge now moved as an amendment to the amendment of Mr. Gordon the following substitute:

"After the next Census to be taken under the laws of the United States, and once, at least, in every ten years thereafter, there shall be a new apportionment of Representation in the House of Delegates, on the basis of white population, and in the Senate on that of the Federal number—and all future enumerations for the purposes of apportionment, may be made, either under the laws of this State, or those of the United States, at the discretion of the General Assembly. And whenever a new ap-

portionment of Representation shall be made, there shall be a new assessment of taxes in the State."

In giving his reasons for moving this substitute, Mr. Doddridge said, that his assent to the Federal number as a basis for the Senate, was given on the hypothesis that the white basis should be adopted for the House of Delegates. This was the last step he could take with a view to compromise.

His objection to the scheme of Mr. Gordon arose from its containing no plan for any future apportionment of Representation. Unless they could agree to a Constitution which should cause Representation to graduate itself according to some just principle mutually agreed upon, they had better do nothing at all: a Constitution without this feature would create more dissatisfaction than existed at present. He was fully confident that the West would accept nothing short of the white basis in the House of Delegates at least: he believed they might consent with some unanimity to that as a compromise. He declared for himself, and for himself alone, that he should determine between this day and Tuesday next, whether he could farther serve his constituents by remaining here any longer.

Mr. Leigh rose to express his sense of what was the true amount of Mr. Doddridge's amendment. Mr. Gordon's plan of distributing the Representation was based substantially on the white population as exhibited by the Census of 1820—though not actually so in all the details, but throwing fractions out of view, it is in fact the basis of white population according to that Census. Now, said Mr. L. the gentleman from Brooke taking the Census of 1820, and having respect to the white population exclusively, demands that this shall be established as a rule for all future time, as the basis of the House of Delegates. It is, therefore, precisely the same question we have been discussing for so long a time; it is brought forward again, and will, I suppose, be repeated until the repetition shall be considered hopeless; and then, the gentleman tells us, he shall determine whether to go home or not. Are we to understand this as a menace, that the Western members will secede in a body? Such an idea has been suggested out of doors—are we to understand it as now threatened here?

Mr. Doddridge (looking towards the reporter.) I hope my words will be remembered:—I said that speaking for myself, *and myself alone*, I should determine whether I could be of any farther service to my constituents by remaining longer here.

Mr. Leigh. If the gentleman shall secede, himself, alone, why then we shall carry our proposition. I am not now to understand him as threatening a secession of the West. If we are to remain together, then the gentleman is to be understood as saying that they will "stand firm," and not advance another step.

Let me address one word to the Representatives of my Western fellow-citizens (for they are my fellow-citizens, and it is my wish that they may long remain so:) all we ask is a Representation of those interests which we hold and which they do not: but if there is to be the smallest infusion of such a principle, then they say that the West will not adopt such a system. What does this prove? That their attachment to us is not equal to that of the Northern States toward their Southern brethren: they do not feel any thing like so warm a regard to a union with us, as the States of the North did to a union with those of the South. For, what is the fact? When the Constitution of the United States was adopted, this very conflict took place: the same claim was advanced by the South as is now advanced by us, and it met the same objections as are now urged by the gentlemen from the West.

The Federal Convention recommended a compromise. The great objection was, that the proposed Constitution gave too much to the South: yet their attachment to their Southern fellow-citizens overcame all objections, and the compromise was accepted. But here, in Virginia, we are told that their attachment to us is so feeble, and their concern for union so small, that they are willing to sacrifice all for a mere theoretical opinion. Are we to take this as their *ultimatum*? Are we to understand that unless we give them, and give them immediately, complete power over our persons and property, they wish no farther connexion with us? I can understand it in no other way. To me it is most painful to hear such language. They will give up all connexion with us, unless we yield them all that they ask.

Mr. Doddridge replied. We have long ago had the *ultimatum* of the gentleman from Chesterfield, (Mr. Leigh.) and a few days since we had the *ultimatum* of the gentleman from Charlotte, (Mr. Randolph.) They have both announced to us that they never will yield us the white basis in the House of Delegates.

[Mr. Randolph here said, the gentleman is perfectly right—perfectly right—we never will.] I thought I was not mistaken. Well, then, I now say that I can go no farther. This is my *ultimatum*. If neither of us is to yield, future discussion can end in no good result. They will re-organize the Assembly, and apportion the Representation of the East and the West differently from what it now is; but they will still leave the West to be effectually and absolutely governed by the East, and they will engraft no provision to meet our future growth in population. I now address myself to the Representatives of the West, and I say to them—we have now, in a House

of two hundred and fourteen, *eighty* Delegates. The total white population of the State being 682,000, and the West containing 319,000 of that number, it is entitled, on equitable principles, to *one hundred* Delegates. We now, therefore, lose twenty of our fair proportion of Representation. But what shall we lose, if these propositions succeed? According to the plan of the gentleman from Chesterfield, (Mr. Leigh,) we are to lose twenty-eight: according to that of the gentleman from Northampton, (Mr. Upshur) we are to lose twenty-four: and according to that of the gentleman from Albemarle (Mr. Gordon) we are to lose twenty-one. We ought to have more Representation than we have now: this is our grievance: and do they remedy it? No. Not at all; they increase it. They now control us, and they are to continue to control us, unless the force of public opinion shall call another Convention. There is no hope for us, unless we settle the matter now. There can be no need of protracting the discussion, unless the principle of a white basis of Representation is to be allowed us. If the Convention rises, we shall be but where we were before it sat. The inequality of which we have hitherto complained, has been the effect of circumstances: it has been induced by time, and the natural progress of our population and improvement: but if the grievance is to be fixed by the vote of a majority here, it will be no longer the effect of time, but it will be the deliberate act and deed of our brethren of the East; and it will be, therefore, more irritating, and more intolerable. Procrastinating our discussions can serve only to sharpen our own animosities and aggravate the discontent of the people. It must be so. The public uneasiness is aggravated with every week's deliberation of this body. If we can't agree, we can't agree:—and there is an end of the matter. I believe the people of the West, generally, will stop at the point I mentioned: such is certainly my own determination: and, I believe, I have just the same right to announce it, as the gentleman from Chesterfield, or the gentleman from Charlotte had to announce theirs.

Mr. Scott said, that the compromise of Mr. Gordon amounted very nearly to allowing the principle of the white basis according to the Census of 1820: future apportionment might be provided for in an amendment; but if none should be agreed upon, it may be important that the principles on which it rests should be known, that it may not be drawn into precedent hereafter. It rested on neither one of the disputed principles: it was founded neither on the white basis, the mixed basis, or the Federal number. If the great question of future apportionment should not finally be settled, it was not their fault: they had offered to meet the West half way, and the offer was refused: he should not now be inclined to go quite so far.

Mr. Powell rose distinctly to disclaim, for himself, and on behalf of his Western friends, the imputation cast upon them by the gentleman from Chesterfield, who had said that the question now was, whether they meant to divide the State if the principles of the Eastern portion of it should be forced upon them?

Mr. Leigh explained. He had *asked*, if that *was to be understood* as the question.

Mr. Powell said, the gentleman had indeed put it as a question; but it was a pregnant question, and carried the intimation that such was their purpose. He now expressly disclaimed any such ulterior view. If gentlemen would force a mixed basis upon them, it would be against his consent, and against every wish and feeling of his constituents; they would reject such a Constitution if they could: but they cherished no purpose of division. But in that event, the table of the Legislature would groan under the mass of petitions for redress which would be presented to it. This would be the result of adopting the measure now proposed. Mr. P. said he should go home, and so far from preaching separation, he should use his utmost efforts to preserve union: but wherever he could make his voice to be heard, he should urge the people indignantly to reject a form of Government which did them such gross injustice. Give us in the House the basis we ask, and we will give you in the Senate that which you demand. We shall then hail the moment, (the first in fifty years,) that we enjoy our just rights. Mr. P. then adverted to Mr. Johnson's reply to the Chief Justice, and insisted that his argument had not been answered and never would be. To meet the suggestion of Mr. Leigh respecting a struggle between the two Houses respecting money bills, Mr. P. had prepared an amendment, which would prevent the Lower House from being ever able to stop the wheels of Government by refusing to send up revenue bills.

Mr. Randolph begged pardon of the gentleman from Fauquier, (Mr. Scott) for whose sound, manly, practical good sense he had the very highest respect, for suggesting that he had really *under-stated* their case. The true medium between the claims of the two sides of the House, was not that which the gentleman from Fauquier had stated; but it was the Federal number. That was the half-way-house. But now they had agreed to meet not there, not at the half-way-house, but at a middle point between the half-way-house, and the extreme West. This was in reality giving up, not *fifty* per cent. of their claim, but *seventy-five* per cent. of it. Instead of taking a middle point between the half-way-house and their *own* end of the road, they took one between the half-way-house and the *western* termination of it. They were not

insisting on seventy-five per cent. of their claim, but had consented to take twenty-five per cent. of it. He had risen to put the matter on its proper foot.

One word more, and he would resume his seat. The reason why the argument of the friend of the gentleman from Frederick, he meant the gentleman from Augusta, (Mr. Johnson) had not been answered was, that all he said had been anticipated. The statement of the argument by the gentleman from Richmond, the Chief Justice of the United States, (Mr. Marshall,) had been such, as to put at defiance all that gentleman had said, or, all that any man on earth could say. Where was the necessity of defending the fortress of Gibraltar, against the abortive and puny attacks of the gentleman from Augusta? The Chief Justice had put the argument on ground which never could be shaken; and which had no more been impugned, than the fortress of Gibraltar could be affected by attacking it with a pocket pistol. He had put it in a light—he did not mean any compliment—in which he put every thing that he attempted to place in a clear light. He had shewn that the weak and helpless Government proposed in the plan of the gentleman from Frederick was not what it was represented to be, and had shewn them what *was* a compromise. The gentleman from Brooke (Mr. Doddridge,) had stated him to have said, that he never would be satisfied, with what was technically called the white basis in the House of Delegates. He never could: he never would: the gentleman's constituents were not more interested in the question than his were; and he saw no reason why his own constituents were to give up any more than those of the gentleman, (and he did not pretend that *they* were bound to do so.) This was not a compromise on any just principle: it was one in which the West took the Lion's share, and left to them of the East, as if they had been a parcel of Jackalls, the refuse and offals of power.

Mr. Johnson expressed his regret, that Mr. Upshur's proposition had not been finally disposed of before that of Mr. Gordon's had been brought before the Committee. He should have thought it desirable, that Mr. Upshur's should first have been made as perfect as possible, before a substitute was received. Other gentlemen, however, who acted with him, had not thought this the better course, and he had acquiesced. He did not rise for the purpose of vindicating the argument he had formerly used from the remarks of the gentleman from Charlotte, or to prove that it possessed a strength which it did not: far less had he intended to represent himself as in any respect, or on any occasion, pretending to be equal to the Chief Justice: it needed no *ghost* (bowing toward Mr. Randolph) to inform the Committee of their inequality.

Mr. Randolph said, he had not distinctly heard the gentleman's words; but if they contained any *ghostly* advice, he was thankful for it, as coming from so *reverend* a quarter. But he could assure the gentleman from Augusta, that whatever he might suppose, he (Mr. J.) was the last man in that committee, against whom he entertained the least possible degree of personal feeling. His hostility toward that gentleman was political only: but he must be permitted to add, that there had been nothing in the gentleman's career, during the present Convention, to induce any man, however humble his condition, to regard him as an object of envy.

Mr. Johnson said, in reply, that he had never been, he believed, an object of envy to any one, most certainly not to the gentleman from Charlotte; for, said Mr. J., we cannot envy any thing while we think there is nothing superior to us. Yet, I cannot take my seat without returning to the gentleman from Charlotte my thanks for the assurance that he cherishes toward me personally, no ill feeling. [Mr. R. None in the world.] If that gentleman had known how entirely devoid my heart was from such a feeling when he took his seat in this Convention, I should have hoped the occasion for this seeming collision might have been avoided.

MR. MADISON now rose, and the members were gathering around him as when he last addressed the Committee; but the Chair having intimated that he considered it as entirely out of order, they resumed their seats. Mr. Madison then spoke as follows:

Mr. Chairman,—In questions of compromise necessarily requiring mutual concessions of opinion, we ought not to be controlled by opinions formerly expressed, whether derived from abstract views of the subject, or from impressions found to be erroneous as to the state of opinion prevailing in this body. For myself, I brought to this Convention a disposition to receive from free discussion all the lights it might furnish, and a spirit of compromise of which I foresaw the necessity; without losing sight of the interests and feelings of my constituents. This view of the trust committed to me, was known to them, when I was honored with it.

This necessity of compromise is now felt by all; and I do not despair that it will yet be effected by adequate concessions on both sides.

The plan proposed by the gentleman from Northampton, freed as it has been from one of its elements (taxation,) appears to be entitled to a favourable consideration: It is not liable to objections which are so decisive with those who oppose the rival plan. The original and real ground of opposition between the two parties, is, that one basis of Representation for both Houses of the Legislature was claimed on one side, and a different basis for both Houses on the other side.

The proposition of the gentleman from Northampton compares the two plans, and divides equal concessions by the difference between them.

And could there be a case, Sir, where *equal*, as well as mutual, concession was more reasonable? For, neither side can say to the other, we out-number you, and you ought, therefore, to yield to numbers. Neither side will presume to say to the other, we have more wisdom than you, more intelligence, more information, more experience, more patriotism, or more of the confidence of our constituents. Yes, Sir, there never was a case imposing more obligation on both sides to relax in their opinions, and by equal as well as mutual surrenders of opinions, to meet on middle ground.

I acknowledge that I cannot concur in the expediency of adopting arrangements merely temporary, however I may respect and value the motives prompting them. They would, in my view, be but an anodyne to the public agitation, only to awaken it, after a lapse of ten years, to a more violent state.

It would be folding up in the instrument of conciliation itself, hidden torches of discord, to be lighted up whenever the same great subject should be reviewed. On the whole, Sir, I shall give my vote for the plan proposed by the gentleman from Northampton, as a more equal ground of compromise than the other; and I have thought it proper to make this explanation, lest my course should be supposed wanting in consistency.

Mr. Nicholas thought it due to himself to vindicate the course he should pursue on the present occasion. Like the gentleman from Orange (Mr. Madison,) he thought that some provision ought to be made for future apportionments; but this was not precluded by the proposition of the gentleman from Albemarle (Mr. Gordon.) No man in the Convention represented a portion of the State that would lose a greater number of representatives by the arrangement, than his own district: and his personal opinion was, that Representation ought to be based on a more numerous House of Delegates: but he felt himself placed in a situation where he must sacrifice the local interests of his district, to the general interests of Eastern Virginia.

He thought it on the whole best to do so. It gave him great pain to be obliged to choose between the two: but he thought he should be best subserving the interests of his constituents, by adopting the proposition of the gentleman from Albemarle. He considered himself as pledged to contribute his aid to the arrangement of a future system of apportionment.

Mr. Scott said, he was acting with the members from Middle Virginia, in embracing Mr. Gordon's scheme.

He would go a step farther: He thought he should be in favour of some scheme of future apportionment. He would not be one of a lean majority to force any rule respecting that subject on a minority: but he was prepared to increase any respectable majority in any plan they should be able to agree upon.

The question was now taken on Mr. Doddridge's amendment, and decided in the negative—Ayes 44, Noes 49.

(Mr. Monroe voting Aye, Messrs. Madison and Marshall, No.)

The question was then taken on Mr. Gordon's amendment, and carried—Ayes 49, Noes 43.

(Mr. Marshall Aye, Messrs. Madison and Monroe, No.)

So the Committee agreed by a majority of six, to adopt the following, as a substitute for the scheme of Mr. Upshur:

Resolved, That the Representation of the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge of Mountains, and nineteen East of those Mountains.

"There shall be in the House of Delegates, one hundred and twenty-seven members, of whom twenty-nine shall be elected from the District West of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the Head of Tide-water, and thirty-four thence below."

Mr. Upshur now offered the following amendment:

Resolved, That the Legislature shall have power, to re-arrange the Representation in both Houses of the General Assembly, once in every _____ years, upon a fair average of the following ratios, viz: 1st, of white population; 2d, of Federal numbers."

Mr. Thompson of Amherst offered the following amendment, to that of Mr. Upshur:

Resolved, That in the year _____ the Legislature shall provide by law for taking the Census of the population of the State, and for a new assessment of its lands: and at the next succeeding session after the Census shall be taken and the assessment made, the Legislature shall by law submit to the qualified voters the decision of the question of the basis of Representation in both Houses of the Legislature. If a majority concur in favor of any particular basis, the Legislature shall at their next succeeding session, apportion the one hundred and twenty-eight Delegates and thirty-two Senators according to such basis, and shall provide by law for all future apportionments upon such basis, and for all future assessments—but should the majority

fail to combine in any one basis, the Legislature shall adopt the compound basis of white population, taxation and Federal numbers, in one only or both branches of the Legislature, as to them shall seem expedient. And the law so to be enacted for apportionment of Representation and for future assessments, shall become and forever thereafter be a part of this Constitution."

The question being taken without debate, it was negatived—Ayes 44, Noes 50.

[Messrs. Madison, Monroe and Marshall, No.]

Mr. Claytor offered the following:

"*Resolved*, That the Legislature shall, in the year _____, make provision for the organization of a Convention equally as nearly as may be, on the qualified voters of this Commonwealth, who shall re-apportion the Representation in both Houses of the General Assembly, upon such basis as they shall think best, and also make provision for future periodical apportionments."

Mr. Johnson stated the reason why he should vote against all amendments of this character, viz: that the Convention was clothed with no power to pass them. It was called for a specific object, viz: the amendment of the Constitution; and it had no power to do any thing else.

The amendment was rejected.

Mr. Campbell of Brooke moved the following, as a substitute for Mr. Upshur's amendment:

"*Resolved*, That when the amended Constitution shall be submitted to the people, the following question, by way of amendment, shall be propounded to the people, for a final settlement of the principle of the apportionment of representation, viz:

"Shall the basis of Representation in both branches of the Legislature be white population exclusively?"

After a few remarks in explanation by the mover, and an objection by Mr. Leigh, The amendment was rejected—Ayes 39.

Mr. Fitzhugh offered the following amendment:

"*Resolved*, That in the year _____, and in every tenth year thereafter, it shall be the duty of the General Assembly to re-apportion the Representation in the House of Delegates, as nearly as possible in proportion to white population: *Provided*, That in making such apportionments, no county shall be subject to division."

It was rejected—Ayes 45, Noes 49.

The question being then put on Mr. Upshur's amendment, (see above,) it was carried—Ayes 50.

Mr. Upshur moved the following proviso:

"*Provided*, That the number of the House of Delegates shall never exceed _____, nor the number of the Senate _____."

It was carried.

Mr. Scott moved that the Committee now rise.

Mr. Powell suggested, that it would be better to report progress, and go into the House and get a vote upon it.

Mr. Leigh said he did not distinctly understand what the progress was: he wished to see and reflect upon it.

Mr. Mercer contended, that nothing had yet been done; because it was the understanding, when Mr. Johnson made his motion to strike out the word "*Resolved*" from Mr. Upshur's first proposition, that a vote was to be finally taken on accepting that proposition as it might be amended.

The Chair said, it should hold it to be its duty to put such a question, should it be moved; but, it was contrary to the rule, which it understood to have been adopted at the commencement of the deliberations of the Convention. The duty of a Committee was to amend—that was its whole duty—and if it could not amend what was sent to it, to report the same without amendment.

Mr. Scott was opposed to reporting in part. Let the Committee go on, and settle what were to be all the elements of the new Constitution, and then refer the whole to a Select Committee, to put them into regular form.

The Committee then rose.

In the House, the printing of the propositions having been ordered,

The House adjourned.

MONDAY, DECEMBER 7, 1829.

The Convention met at 2 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

The report of the Committee appointed to enquire as to another place of meeting for the Convention, was called up; and after some conversation, was agreed to.

The result is, a resolution of the Convention to remove its sittings to Mr. Armstrong's Church, where suitable fixtures are to be prepared for its accommodation.

A motion, authorising the Clerk of the Convention to act by a deputy, was slightly discussed, and for the present laid upon the table.

[Mr. Munford (it ought in justice to be known,) had expressed his willingness to resign, but was persuaded, by many leading members of the Convention, not to do so. He then expressed his willingness to serve without compensation. Entire satisfaction was expressed on all hands, and the resolution was laid upon the table, on motion of Mr. Summers, merely for consideration as to the best arrangement. The name of Mr. Wyndham Robertson (brother of the Attorney General,) was mentioned as a suitable deputy.]

The Convention then, on motion of Mr. Powell, adjourned to meet in the Presbyterian Church to-morrow, at 11 o'clock.

TUESDAY, DECEMBER 8, 1829.

The Convention met in the Presbyterian Church at 11 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

The President laid before the Convention the following letter :

RICHMOND, DECEMBER 8, 1829.

SIR,—With the warmest feelings of gratitude to the Convention, for the honorable office they were pleased to bestow upon me, permit me, through you, to tender them my respectful resignation of that appointment. The delicacy of my situation will be readily perceived. For the fifth time, I have been elected Clerk to the House of Delegates; and although it would be highly gratifying to my feelings to retain my present station as Secretary of the Convention, other considerations imperiously require me (with whatever reluctance,) to pursue a different course. So long as the sessions of the Convention and the House of Delegates, would not have conflicted, it would have given me great pleasure to have afforded each of them my services: and I had determined to do so, without receiving double compensation; but, being unwilling to transact by deputy the duty which it may be supposed I ought to perform myself, I feel constrained to pursue the course I now adopt. It will afford me great pleasure to render any assistance which may be required to enable my successor to understand the present business of the Convention.

Relying on the liberality of the body over which you preside, for a just appreciation of the consideration, and an indulgent interpretation of the motives that actuate me,

I have the honor to be,

With the greatest respect,

Your and their very obedient servant,

GEORGE W. MUNFORD.

HON. JAMES MONROE, }
President of the Convention. }

On motion of Mr. Scott, the letter was laid upon the table.

The Convention then, on motion of Mr. Scott, proceeded to ballot for a Secretary. Mr. Scott nominated Mr. David Briggs of Richmond, (a member of the Executive Council,) and said a few words as to his character and standing.

Mr. Doddridge nominated Mr. Thomas P. Ray of Monongalia, and pledged himself for his competency.

Messrs. Nicholas and Powell supported the nomination of Mr. Briggs,

When the Convention proceeded to the ballot, which resulted as follows:

For Mr. Briggs,	-	-	-	-	-	57
For Mr. Ray,	-	-	-	-	-	26
For Mr. W. Robertson, (no candidate,)	-	-	-	-	-	3

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The result of the ballot having been reported to the House, Mr. Briggs was declared to be duly elected.

Mr. Venable, referring to the great difficulty of hearing in the present place of meeting, moved that the report of the Committee appointed to enquire as to a suitable place of meeting, be re-committed.

The President laid before the House the following letter :

RICHMOND, 7th DECEMBER, 1829.

SIR,—I am requested, by a resolution of the House of Delegates, to advise the Convention of Virginia of a disposition on the part of the House, to afford the Conven-

tion every facility for the convenient and expeditious dispatch of the important duties which devolve on that body, and to offer it the daily use of the Hall of the House of Delegates, after the hour of 12 o'clock.

I have the honor to be,
With great respect,
Your obedient servant,

LINN BANKS, *Speaker H. D.*

JAMES MONROE, Esq. }
President of the Convention. }

A desultory debate, attended with some confusion, ensued, in which Messrs. Venable, Mercer, Bayly, Goode, Johnson, Leigh, Doddridge, Stanard, Campbell of Brooke, Cooke and Mason, took part. Various propositions were suggested: some to carpet the aisles of the Church; others to remove to the Baptist Church; others to return to the Capitol; others to remain and give the present place of meeting a longer trial; but the conversation (for, it scarce deserved the name of a debate,) issued in the adoption of a motion made by Mr. Fitzhugh, that the Convention adjourn, to meet in the Capitol this day at 12 o'clock.

The Convention adjourned accordingly; [and the members, who had been seen an hour before, streaming down the hill, were soon seen retracing their steps, relinquishing the Church, with its long aisles and lofty ceilings, for the more congenial precincts of the Hall of Legislation, with its convenient seats and easy reverberation.]

At 12 o'clock, the Convention assembled in the Capitol.

Mr. Scott announced to the House the request of the President, that his presence might be dispensed with for the rest of the day, and that Mr. Stanard would occupy his place.

[Mr. Monroe is in feeble health; and his unremitted attention to the duties of his situation, accompanied by the effects of a severe cold, have greatly prostrated his strength. It is hoped he will be able to resume his seat to-morrow.]

The House then went into Committee of the Whole, Mr. P. P. Barbour in the Chair, and took up the report of the Executive Committee, (the discussion on which occupied the residue of the day.)

When this report was last under consideration, the first resolution had been proposed to be amended by Mr. Doddridge, so as to declare, that the Governor should be elected by the qualified voters of the Commonwealth, entitled to vote for the most numerous branch of the Legislature; that he should hold his office for three years, and then be ineligible for three years more.

But Mr. D. had consented, that Mr. Powell should first offer, as a substitute for the first resolution, the following plan:

Resolved, That the Executive Department of the existing form of Government, ought to be amended as follows:

“SECT. 1. The Executive power shall be vested in a Governor. He shall hold his office for years, and be ineligible for the term of years thereafter: and a Lieutenant-Governor shall be chosen at the same time, for the same term, and under the same restrictions.

“SECT. 2. The Lieutenant-Governor shall act as President of the Senate, but he shall have no right to vote, except the Senate be equally divided upon any question; in which case he shall have the casting vote.

“SECT. 3. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the Commonwealth, nor any who shall not have attained the age of years, and who shall not have resided years next preceding his election, in the State.

“SECT. 4. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the most numerous branch of the Legislature, by the voters qualified to vote for members of the General Assembly: *Provided*, That the election shall take place throughout the Commonwealth on the same day. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor, shall be elected. In case two or more persons shall have an equal number of votes for Governor, or for Lieutenant-Governor, the Legislature shall immediately, by joint ballot of both Houses, choose of the persons having an equal number of votes for Governor or Lieutenant-Governor, the Governor or Lieutenant-Governor, as the case may be.

“SECT. 5. The Governor shall be Commander-in-chief of the militia. He shall have power to convene the Legislature on extraordinary occasions. He shall, from time to time, give information to the Legislature of the condition of the Commonwealth, and recommend to their consideration, such measures as he shall judge necessary and expedient. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed.

"SECT. 6. The Governor and Lieutenant-Governor, shall, at stated times, receive for their services, a compensation, which shall neither be increased nor diminished during the term for which they shall have been elected.

"SECT. 7. The Governor shall have power to grant reprieves and pardons after conviction, for all offences, except treasons and in cases of impeachment. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next session, when the Legislature may pardon, or direct the execution of the criminal, or grant a farther reprieve.

"SECT. 8. In case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties of his office, his powers and duties shall devolve on the Lieutenant-Governor; and in case of the removal, death, or resignation, or like inability of the Lieutenant-Governor, the Legislature may provide by law upon whom the duties of Governor shall devolve, until such disabilities shall be removed, or a Governor shall be elected.

"SECT. 9. The Governor shall have power to nominate, and by and with the advice and consent of the Senate, appoint Judges of the Supreme Court, or Court of Final Jurisdiction, and Judges of such Inferior Courts as may from time to time be established by law; all militia officers, from the rank of Colonel exclusive; the Treasurer, Auditor of Public Accounts, Register of the Land Office, and Attorney General. The Legislature may by law vest the appointment of all other officers of the Commonwealth, whose appointments are not herein otherwise provided for, in the Governor, with the advice and consent of the Senate, or in the Courts of Law.

"SECT. 10. The Governor shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session of that body.

"SECT. 11. The Governor shall have power to require in writing the opinions of the Lieutenant-Governor, and of the Attorney General, upon all matters appertaining to the duties of his office.

"SECT. 12. No person, whose tenure of office depends on the pleasure of the Governor, shall be removed from office without the advice and consent of the Senate to such removal. But the Governor shall have power at any time, to suspend such officer, and appoint another to discharge the duties of his office, until the next session of the Senate, and until their advice and consent to such removal shall be ascertained and expressed."

And the question being now on that amendment,

Mr. Powell rose and addressed the Committee:

I beg leave to assure the Committee, that it is not my intention to occupy their time by a protracted argument in favour of the proposed substitute now under consideration, at this period of our session, after having expended nine weeks in discussion, without having definitely settled a single principle. I should regard myself as unpardonable in trespassing upon the time of the Committee, for a moment longer than was absolutely necessary for explanation. I shall content myself with bringing to the view of the Committee, the new and distinguishing principles, which it is my object to infuse into the Executive Department of the Constitution, and the leading considerations which have influenced my judgment, in presenting the proposed substitute.

I had hoped, Mr. Chairman, that upon this subject, there could exist no sectional or party feelings—that we should all concur in organizing the Executive Department, upon settled and acknowledged principles—acknowledging as we all do, that in a fair representative Government, there ought to be three departments: That these several departments ought to be, in the distribution of their respective powers, separate and distinct, as far as practicable, and, especially, that they ought to be independent of each other: but above all, believing that one department should not owe its very existence to another. I had hoped that the Committee would promptly have applied these principles to the Executive of the existing Constitution, and reformed it accordingly. If such reform is not required at the present moment, I ask gentlemen to look forward to future times and ask themselves, whether in the course of human events, the time may not arrive when the present powerless Executive may not be totally inadequate to its object. It is painful to look to evil times; but it is wise to provide for such times—to be prepared for the evil day, when it shall arrive. The time may come, when an efficient Executive, founded upon the affection and confidence of the people, may be absolutely necessary for our security and preservation. These general considerations prompted me to propose the infusion of the prefixed new principles, into the Executive Department of the Government. It must be conceded that the Executive is now but a cypher—a bye-word at home—an object of ridicule abroad; the mere creature of the Legislature, without a solitary, substantive, independent power—bound to obey their will, and execute their mandates—the very

name of the Governor, unknown to many citizens of the Commonwealth, during his whole term of service.

But, Mr. Chairman, I am transcending the limits I had prescribed to myself upon the present occasion. My object was only to present to the consideration of the Committee, the new and discriminating principles, I was desirous of introducing into the Executive Department. I will proceed to this duty.

I propose in the first place, the creation of a new officer, with new powers, and for specific purposes, a Lieutenant-Governor. I have proposed this, with reference to what this Committee have already done, by a most decided vote; I mean the abolition of the Council of State; and moreover, with a view to the possible death or disability of the Governor: In the latter event, to supply his place—and in the former, to constitute one of his advisory Council. This officer, Sir, might also discharge other and important duties. It is provided, that he is to be the President of the Senate—and, to him, the Legislature would be expected to assign duties of vital importance, under the general superintendence of the Governor: the duty of watching over, and participating in directing the operations of the Literary Fund, and the Fund for Internal Improvement, and a general superintendence over the Penitentiary system—duties of sufficient interest and importance, fully to occupy the time, and to require the talents of one qualified to discharge the duties of the Governor, in certain events before alluded to.

The second principle I proposed to introduce into the Executive Department is, that the Governor is to be elected by the people, and not by the Legislature as is now provided: In other words, that the Chief Magistrate of Virginia—the head of a distinct department of the Government, is not to owe his official existence to a co-ordinate branch of the same Government; is not to owe his official existence to a branch of the Government, upon whom, in theory, he is to be a check—by whom he is paid for his services, or not, according to its will and pleasure: a branch of the Government, who may say to him, for every independent exercise of opinion, contrary to its will: “We will not only deprive you of your office, at the end of the year, but will, in the interim, deprive you of your bread.” It is to provide a security against such a state of dependence, I propose the election of the Governor by the people, in preference to the Legislature. I had believed, that upon this principle, there could be no difference of opinion.

But, Mr. Chairman, if the people are capable of self-government, does it not follow, that it is their undeniable right, to elect the Chief Magistrate—a right, of which we cannot, ought not, to divest them, except it can be conclusively shewn, that it would be unwise and unsafe, to limit its exercise to them?

It devolves upon gentlemen, opposed to the election of the Governor by the people, to shew, that it is safest and best to elect by the Legislature, rather than by the people. Permit me to depart from the course I had prescribed to myself, for a moment, to examine one or two of the most prominent arguments relied upon by gentlemen in opposition. The venerable gentleman from Loudoun, (Mr. Monroe,) urges upon us, that in the nature of things, if the people elect him, it must be done through the agency of a *caucus*. Without admitting the correctness of this proposition, let us examine, for a moment, the character and extent of this objection.

Does the venerable gentleman believe, that caucus agency will not be employed in the election by the Legislature? What does observation and experience teach us upon this subject? Do we not all know in elections by the Legislature, that caucuses are resorted to by the respective friends of different competitors for office? That in truth and in fact, the facilities and efficiency of the caucus system is greater in a small than in a very large body. Can we shut our eyes to the fact, that where the Legislature have the power to appoint to office, that a system of *log-rolling* will occasionally be resorted to? That interchange of good offices will be made by the respective friends of candidates for different offices? I will appeal to the venerable gentleman from Loudoun, to say, if the caucus system is inevitable, whether there is not more danger to be apprehended from that system when resorted to in the Legislature, than when individuals are selected and deputed by the people from every section of the State, to meet at some convenient place to nominate a suitable candidate for Governor, for this object alone and with no other or further powers. I do not think, Mr. Chairman, the evil likely to occur; but, if inevitable, I am perfectly satisfied, that the caucus system, springing directly from the people, for a single and unconnected object, is liable to much fewer exceptions, than the same system in the Legislature. Would gentlemen consent, that the President of the United States should be elected by Congress originally? Has not experience taught us the evils of electing the President ultimately by that body? Has not the opinion become universal, that the Constitution of the United States ought to be altered in that respect? All the reasons in favour of such alteration, apply in opposition to the election of the Governor by the Legislature. The last alteration which is proposed by the substitute, and to which I shall invite the attention of the Committee, is the transfer from the Legislature, of

the appointment of certain enumerated officers to the Governor, by and with the advice and consent of the Senate. In vesting this power in the Governor and the Senate, I have not been insensible to the evil consequences of giving a large patronage to the Executive, and have attempted to guard against them. Our experience under the Government of the United States, while it has evinced the evils of giving unlimited patronage to the Executive, certainly furnishes no argument to shew, that the Executive ought to have no patronage, or that patronage may be more safely confided to the Legislative Department. I beg gentlemen to look to the particular character of the several officers, whose appointment I propose to give to the Governor and Senate; and I beg them, to ask themselves, if in the nature of things, there is any ground to fear the use of this patronage for sinister purposes. He is to nominate, and by and with the advice of the Senate, to appoint the Judges, the militia officers over the rank of Colonel; the Treasurer, Auditor of Public Accounts, Register of the Land Office, and the Attorney General, and no others. The number of the Judges is small, and they are dispersed over a wide surface of country. Their character, their habits, their tenure of office, their entire independence, all preclude the idea of their subserviency to party views or party purposes—there can be no fear from this source of patronage. The militia officers over the rank of Colonel, are alone to be appointed by the Executive and the Senate. Can gentlemen seriously apprehend danger from this source of patronage? I will not delay the Committee by combating so idle and visionary a fear. There is one idea, however, connected with this branch of the subject, which I feel bound to suggest. If the militia are to be effectually employed—if such an occasion should ever occur, the Governor is and ought to be held responsible for all results as Commander-in-chief; and common justice would demand that he ought to have the selection of his agents in the discharge of his important duties. There are many and strong considerations that might be urged against depositing the appointing power in the Legislative Department. It is the most expensive department of every Government. It is the most encroaching department. There is an irresistible propensity in the popular branch of every Republican Government, to draw to itself as much power as possible—and above all, if they discharge faithfully their Legislative duties, they have no time to devote to other and different duties. The experience of every gentleman must have satisfied him, that there is great waste of the public money in the exercise of the appointing power by the Legislature of Virginia. Even in the appointment of a Councillor of State, we have witnessed one or two days of the time of the Legislature expended, at the rate of a thousand or twelve hundred dollars per day; and the same remark is applicable to a greater or less extent in all elections by the Legislature.

I have thus briefly explained, Mr. Chairman, the provisions of the substitute intended to vary the existing Executive system. I might debate upon these several subjects, but I forbear—our time is too precious, and the questions have incidentally been often discussed in the progress of our debates. I will now appeal, in conclusion, to honourable gentlemen who have indulged so freely in denunciations of this scheme, as tending to erect a splendid Executive—as calculated to infuse into the Constitution monarchical principles, to point their finger to a single feature, calculated to support these imputations. I leave my scheme to its fate, satisfied whatever that fate may be, I shall in no wise be responsible.

MR. TAZEWELL rose in reply. It was not his intention, at this time, to go at length into the merits of the question. The mover of the amendment, had commenced his argument in defence of it, by stating its chief merit to lie in that feature, by which the election of Governor was given directly to the people. On that feature of it, he should address a few remarks to the Committee.

Ought the Governor of such a Commonwealth as Virginia, to be elected directly by the people?

In discussing this subject, the advocates of the proposition had invariably commenced, by laying down the doctrine, that on republican principles, the people, and the people alone, are the legitimate source of power: and that, *therefore*, they ought to elect, to all the offices in the Commonwealth. None, that ever he had heard of, doubted the position, that the people, in this country, are the sole, legitimate source of power.

The only question, said Mr. T. is, as to the mode in which they shall exercise their power. Shall they exercise it themselves, in the first instance, or by agents, whom they appoint for that purpose? Either of these modes is equally republican. Will the gentleman contend that the President of the United States is not elected by the people? Yet the means they employ in electing him, is to appoint Electors to choose him by their votes. The means by which the Governor of Virginia is elected at present, are of the same kind. The people elect the members of the Legislature, with the knowledge that they are to choose the Governor. The election of these Delegates is the act of all the people. And the only question is, whether they shall call an individual to the Executive office, in their own persons, or through their agents. Like

most other questions in politics, it is a question of *expediency*: to be referred to the condition of the country, and the nature of the duties to be performed by the Executive. The gentleman himself concedes the question, in another view of it. If it be true that all power originates with the people, and that, *therefore*, they ought to choose their own officers, and the Governor as one of them, why is it not true that the people ought to choose the Judges also? Why deprive them of the power of electing officers of one kind, and admit them to elect those of another? And yet the gentleman himself makes this distinction. I heartily concur with him that the Judicial officers ought not to be chosen directly by the people: but I contend that it is equally inexpedient that they should elect Executive officers. I have many objections to it; to not one of which, the present mode of election is exposed.

I do not approve of calling on the people to elect, except in a case where they can act understandingly: and that is, in the choice of their own local Representatives; the members of both Houses of the State Legislature, and members of Congress. They all know this duty, and perform it well; but when you give them the choice of officers, consequences result which are fatal in their tendency to the people themselves.

The first difficulty is this: in summoning them to the polls, you must either convene them at the same time that they elect their Representatives, or at a different time. If at a different time, we all know, from experience, that it is impossible to get a full election. They will not, and do not, turn out to the polls at any other season of the year than in the Spring. This is not speculation; it is fact, as all gentlemen who hear me know. When vacancies occur, by death or other causes, in the Delegation to the Legislature, and writs are issued for an occasional election, out of the usual season, it often happens that less than half, sometimes that less than a third, of the whole number of voters in the Spring, can be brought to the polls. If the choice of your Governor shall be appointed at any other time of the year than at the Spring elections, the practical result will be, that he will inevitably be chosen by a small *minority* of the voters themselves. You will be compelled to elect all your officers at the same time, and then we know, from what takes place in other States, what must follow. When many officers are to be chosen at one and the same time, the choice of the most important of them will invariably control all the others: the smaller offices will be lost sight of, and swallowed up in the importance of the great one. If you so arrange your system as to make the office of the Governor the most important, then the friends and partisans of the Governor, will doubtless be very glad to see the plan of the gentleman from Frederick (Mr. Powell) prevail, and they will sacrifice every thing else to secure the election of their Governor. It is so in New York. He who is for the Governor, is sure to get the vote of all other officers in the county: it is the invariable result. But these are not all the consequences that must ensue. By whom is the election of Governor to be made? by a *majority* of the people? or only by a *plurality*? If it be said, by a majority, I ask whether, if the people are to be left wholly to themselves in this matter, in an empire so wide as this Commonwealth, and with so little intercourse between its opposite extremities, any man can believe it possible that the people will ever elect a Governor at all? On this plan there would be twenty-five candidates at the least; some leading man is best known to each district of the State; and the people, left to themselves, will naturally vote for him; there will be as many candidates as there are districts, if not more, and there will be no election. Then, I suppose we are to adopt the New England practice, and turn them back to the people till they shall give one the majority. But in the mean while, the period will have elapsed for which he was to have served. You will never unite a majority of all the people of Virginia on any one candidate in that time. But to guard against this difficulty, you say that a *plurality* shall elect. What then? There will be a diversity of votes, and the largest and most united county in the State, (which that is I do not know) will regularly and invariably give a Governor to the Commonwealth. Which ever course you pursue, you will come to the same result. You must either get a Governor who is not known to the people, or a Governor appointed by a small minority of the people. A remedy will be brought for such a dilemma, and what will it be? The members of the Legislature will convene in this Hall, and here they will hold a *Caucus* to make a nomination of Governor!

It will happen from the necessity of the case. Then what becomes of the gentleman's principle? In its place you will introduce the odious caucus system, in all its vigour, here, at the Seat of Government: and then, you have an election, not by the people, but by a majority of the members of the Legislature, not appointed to the task, and wholly irresponsible for the manner in which they perform it. Is it not better at once, and openly, to call upon the members to vote for the Governor, and hold them responsible for their act?

For this reason it was, that the wise framers of your Constitution gave the election to the Legislature. It is better than to give it to the people directly, who can have little personal information as to the comparative merits of candidates, and who can

make no choice by a majority for a long period of time; and who, if electing by a plurality, will be thrown into the hands of a caucus.

Something was said about the *expense* of this election: we were told it was to cost \$1,200. But has the gentleman calculated the expense of giving the election to the people? the loss that must be sustained by them in order to perform the task? Will \$1,200 or \$12,000, cover this? No, Sir; this is an element he has not considered. Does he think it costs nothing to call out all the people of Virginia to their courthouses, some ten or a dozen times in the course of two years? On the score of economy, then, the matter is much better as it now stands.

I am opposed to frequently convening the people in any other manner than is at present provided by the Constitution. Nothing is more likely to dissatisfy the people themselves, than to harass them in this way. We know that even now, whatever their disposition may be on some special occasion, but comparatively few attend at our elections. Get them to begin neglecting to attend the election of Governor, and you will soon have them neglecting the elections of members of their Legislature; the most calamitous event, in my judgment, of any that can befall the Commonwealth.

These are the reasons for which I prefer the mode of election now provided by the Constitution; or rather, that which will be provided, if one of the principles be finally adopted which has received the sanction, I believe, of all, or nearly all the members of this Committee, viz: that all the elections shall be held *viva voce*. Suffer me, here, to answer one of the arguments of the gentleman, which he grounded on the fear that in the Legislature there will be introduced a system of "log-rolling," as it has been expressively termed. Let me remind the gentleman that there is to be no *ballot box*; each member will have to record his vote with his name to it. His constituents will know how he has acted, and he will have to explain when he returns to them. This will be a great improvement in the election of Governor. The people will still elect him, but not by irresponsible agents. The Constitution will require every man to act openly, *viva voce*, under the eye of those who appointed him. But the choice immediately by the people, will be injurious in its effect, to the people themselves.

One word on the other branch of his argument; I mean that part of it relating to patronage. In modern times, all the practical business of Government is confined principally to two subjects, which absorb all its actual power; these are, revenue and patronage. It has been said by one of the wisest statesmen of modern times, that "the revenue of the nation is the nation." I concur in this sentiment: and next, after revenue, comes patronage. In a Republican Government, nothing is so important as first to reduce the amount of its patronage, and then to divide the power over what remains. The wise framers of our Constitution hit upon the mode of doing this. They gave to the County Courts a large share of the patronage of this Commonwealth; they gave another large share to the Legislature, and then they allowed the Executive the rest. The effect has been most happy: There has not been, in the course of fifty-four years, a single case, at least my recollection does not now supply me with one single case, of general excitement in the choice of our Governor. There has been no caucus; no log-rolling. The reason is, the Executive has not enjoyed much patronage. But clothe the Executive power with the patronage of the State, and you will introduce at once conflicting principles, which it will be impossible to control, and which will have the most dangerous consequences. So far from regarding the second member in the gentleman's plan as any recommendation to it, I consider it the most objectionable feature of the whole. Let the patronage of the State remain as it is, and it will produce only good results; but increase it, as is proposed, and you will make the office of Governor so desirable, that you will have cabals and commotion throughout the community.

These are the reasons why I am opposed to those two features of the gentleman's plan: and if these two are stricken out, all the residue will be found to have been provided for in the report of the Executive Committee.

Mr. Wilson required that the question be taken on the several resolutions of Mr. Powell *seriatim*, as he was in favor of some and opposed to others of them.

Mr. Stanard called first for a division of the question to strike out and insert.

It was so divided accordingly: and (on the question to strike out the resolutions of the Executive Committee, as already amended, previously to the offering of Mr. Powell's substitute,) the vote stood, Ayes 34: which being a minority, the motion to strike out was lost.

So the Committee decided not to prefer Mr. Powell's substitute.

(Mr. Madison voted in the affirmative.)

Mr. Doddridge now moved farther to amend the report of the Executive Committee, as follows:

"That the Governor be elected by the persons qualified to vote for members of the House of Delegates, at the several times and places appointed to hold elections for members of the General Assembly. The Governor shall hold his office for _____ years, and after the expiration of his time, shall be ineligible for _____ years."

And the question being on striking out and inserting, Mr. Fitzhugh said, that the report of the Committee had been amended on his motion. The opinions he had then expressed, he held still. If the Constitution was to be so framed, that the election of Governor by the Legislature, would be a fair expression of the will of the people, and would leave the Governor afterwards independent of the Legislature, he should be in favour of his election by that body. He thought the Governor's independence pretty well secured, as the resolution now stood; and the question now was, whether his election by the Legislature would be a fair expression of the popular will. But this must depend on a matter yet unsettled, viz: the arrangement of Representation and Suffrage. If this was to be so arranged, that the vote of the majority of the Legislature would express the will of but a minority of the people, then he should be in favour of his election by the people themselves.

Mr. Doddridge said, that he too adhered to his former view of this subject. He felt so much solicitude on the all-absorbing question of the basis of Representation, that it entered into all subjects connected with it. If the Legislature was not to be made fairly to represent the people, then his solicitude for a popular election of Governor would be still farther enhanced. They could not stir wisely in this, until that was first settled.

Mr. Leigh demanded a division of the question on striking out and inserting. It was divided accordingly; and the question being put on striking out, it was negatived—Ayes 42, Noes 49.

[Mr. Madison, Aye.]

So the Committee refused to strike out the Governor's election by the Legislature.

No farther amendments being offered to the first resolution of the Executive Committee, the second was read as follows:

"2. *Resolved*, That there ought to be appointed a Lieutenant-Governor of this Commonwealth."

No amendments being offered to this, the third resolution was then read, which is in these words:

"3. *Resolved*, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council."

Mr. Upshur moved to amend this resolution as follows:

"*Resolved*, That there shall be appointed an Executive Council or Council of State, consisting of a Lieutenant-Governor, and two Councillors, (who shall perform the same duties, and in all other respects hold the same relation to the Governor, as the present Council of State.)

"The said Councillors shall be elected by the General Assembly, and shall continue in office three years, but may be re-elected from term to term. All vacancies occasioned by death, resignation, removal from the Commonwealth, or other disability, shall be supplied by the General Assembly.

"Two of the said Council shall form a quorum, and in case of an equal division of the Council, the Governor shall have the casting vote."

Mr. Wilson demanded a division of the question, on striking out and inserting; but withdrew the motion at the request of

Mr. Fitzhugh, who wished Mr. Upshur to have an opportunity of explaining and advocating the amendment he had offered; but who gave notice that if it was adopted, he (Mr. F.) should move to amend it in a manner which he explained.

Mr. UPSHUR then rose to address the Committee:

Mr. Chairman,—It was very far from my expectation, when I offered the resolution before you, that I should involve myself in the discussion of this already exhausted subject. It was my design to submit to an immediate vote, without adding a single remark to the ample arguments, which we have already heard. It seems to be considered, however, that I am renewing a proposition, which has been substantially rejected already, and of course, that it is incumbent on me to assign some reason for such a proceeding. I shall do so, Sir, with all possible brevity and simplicity, contenting myself with a mere exposition of my views, without attempting to enforce or illustrate the conclusive arguments, which have already been urged by others.

We must all have been struck with the fact, that every scheme which has been presented to us upon this subject, contemplates a Council, in one form or another. In this respect, the coincidence between them is remarkable, and they differ only in the details of arrangement, and the duties to be performed. Let us examine them all, in order that we may select from their number that which will be at once the cheapest, and the most safe and salutary in practice.

The first to be reviewed, is that of the gentleman from Richmond, (Mr. Nicholas.) He proposed a Council different from that now under consideration, only in this, that it was to consist of four members, instead of three. I need scarcely say, that it met my entire approbation; but, it has been rejected by the Committee, chiefly, I am willing to believe, because it was considered unnecessarily numerous, and therefore, unnecessarily expensive. In this respect, and in this only, the plan before us is pre-

ferable. It promises the same advantages as a component part of the Executive, while it removes, to a great extent, the objection on the score of expense.

Another plan proposes, that the Council shall consist of the Attorney General, and what has been called the Heads of Departments; that is, the Auditors, Treasurer, Register of the Land Office, or some one or more of them. In this respect, gentlemen seek to form the Government of Virginia upon the model presented to us in that of the United States, not remembering that the two Governments are so entirely different, both in their structure and in their purposes, as to discountenance all arguments from analogy. The very nature and objects of these offices in Virginia, forbid the idea that those who fill them are properly qualified to become the advisers of the Executive head. They all require men of methodical business habits, laborious industry, and a correct knowledge of accounts; and they require nothing more. We have no diplomatic intercourse to conduct; no foreign connexions to guard; no interest of any sort, with which these officers are connected, requiring that they should be politicians, nor indeed, that they should possess any other qualifications than those of the simple accountant and clerk. To what objects shall the Legislature have regard, in electing them to office? Shall the Auditor be chosen because he is qualified for the duties of Auditor, or because he possesses the loftier qualifications of an Executive Councillor? He who is *best* suited to the one station, may be *least* suited to the other; and this indeed, *must* be the case in most instances, since the duties of the two stations are wholly dissimilar. The same remark applies with equal truth to the Treasurer and Register. By this plan, therefore, we shall be reduced to the sad alternative, either of filling these important departments with incompetent heads, or else of providing the Governor with incompetent advisers. To this view of the subject, which would of itself be conclusive to my mind, may be added the fact, alike fortunate and honourable to us, that we have no *offices* without *official duties*. And so far as the officers above mentioned are concerned, it is believed to be strikingly true, that they have already a mass of duties resting upon them, which *all* their time and *all* their attention barely enable them to discharge. As to the Attorney General, he is already a Councillor, as far as he can ever be properly made so. He is the law adviser of the Executive. This is his profession, and for this he is fitted. His mind is not turned to the details of Executive business; and he may, and in most cases *will be* found as little qualified for them as any other man in the community.

There is yet another objection, which is decisive upon this question. According to the scheme of our laws, (and from the necessity of the case, it must always be so,) the Executive exerts a direct supervision over most, and perhaps all of these departments. It must appear to every one extremely absurd, to compel the Governor to take advice of those very individuals, upon whom his power is to operate, and who have, so far as this branch of Executive duty is concerned, a direct interest to mislead his judgment. The argument upon this point is susceptible of great amplification. Gentlemen, however, will not fail to perceive the dangerous and corrupting influences of this sort of official connection, upon official responsibility, and the purity of official conduct. It cannot be necessary to pursue the subject through all its details, nor to point out all the various modes in which these deleterious influences may be exerted.

The only remaining plan which has been submitted for consideration, or brought to our notice in the course of debate, is that of the gentleman from Fauquier, (Mr. Scott.) He proposes a Council of *advice* only, possessing no power to control in any respect the discretion of the Governor. In whatever aspect this plan may be viewed, it appears to me to be altogether useless and unprofitable. Will you compel the Governor to consult his Council in all cases, or will you leave this to his discretion? Let us view the subject in both these aspects.

According to our present system, it is true as a general rule, that the Governor can do nothing without the advice of his Council. We are informed, however, by the gentleman from Amelia, who now fills that station, that in practice, there are a variety of cases in which the Governor acts alone; cases which could not be foreseen by the Legislature, and which in their circumstances, demand this departure from the general rule. If we require, by a Constitutional provision, that the Governor shall in *all* cases consult his Council, we shall run the hazard of destroying the efficiency of that department in a large class of cases, which require the utmost promptness in decision and action, and in which no consultation with Council can ever be necessary. If, on the other hand, we require such consultation in particular cases only, how, I would ask, shall we discriminate? It is obviously impossible to do so, unless we can look through all futurity, and provide for all exigencies, which time, and the changing relations of the Government may produce. In this view of the subject, we have a clear advantage in preserving the present organization of the Executive. The practice under it is settled, and its powers and duties are ascertained by time, and fixed by the long acquiescence of the country.

But, Sir, apart from all these considerations, what benefit can we promise ourselves, from compelling the Governor to consult even the wisest sages of the land, if we leave him at liberty to disregard their counsel? After all, his own discretion must be *his* only guide, and *our* only security. Even if no Council were provided, he would be at liberty to consult whom he pleased, and we should have the same security which this proposition offers, that he would consult those who were competent to advise him, and that he would profit by their counsel. I can perceive no benefit which any one can promise himself, from this proposition, except in this, that the Council, by keeping a record of the measures proposed for their consideration, might bring the conduct of the Governor to the notice of the country; and thereby provide a means of enforcing the responsibilities of his office. There is danger that we may be deceived by the speciousness of this idea. What will be the real office of this advising Council? They cannot compel the Governor to act: they cannot restrain him from acting: they cannot control him in any respect whatever. Their sole office is to hear the Governor, while he announces his purposes; to express their own opinions, conscious that no one is compelled to respect them; and to record the transaction for the information of the country. This is only another name for spies upon the Governor. It seems to me inevitable, that the office of Councillor must soon fall into discredit under such an organization as this, and that it will be impossible to draw to it such talents and qualifications, as to give it either dignity or usefulness. And even if such consequences as these should not be the result, in what respect, permit me to enquire, can a system like this secure responsibility on the part of the Governor? Suppose that you have all the information which this *listening and recording* Council can give you; and suppose, if you please, that the Governor has, in hundreds of instances, disregarded their advice, when in your opinion, he ought to have acted upon it. What then? Have you not expressly authorised him to disregard it; and will you punish him for exercising that very discretion, which your fundamental law *compels* him to exercise? It is impossible, Sir—from the very nature of the case, it is impossible, that responsibility can be in any degree secured by such a contrivance as this.

We are yet to consider this scheme, Sir, as leaving it discretionary with the Governor, whether to consult his Council or not. This is, in other words, to submit it to his discretion, whether he will *have* a Council or not. I will not detain the Committee, by pointing out the practical absurdities of such a system as this. You allow the Governor to consult his Council or not, as shall seem to him proper; and if he should condescend to consult them, you allow him to follow their advice or not, as shall seem to him proper. What is such a Council, other than a name?

I have endeavoured to shew, that the plan now before us provides no means of enforcing responsibility on the part of the Governor. It is worthy of remark, that it leaves the Councillors themselves equally irresponsible. It is their office to advise: it is the Governor's office to act. It is difficult to imagine how you can punish a Councillor for giving bad advice, when, according to the strict theory of your system, no practical consequences can ever result from that advice.

If, Sir, it be admitted, that a Council of State in some form or other, ought to be provided, I venture to hope, that none of those which have been reviewed, and which propose to change the character of that body as now existing, will meet the approbation of the Committee. I have now but little more to say in favour of the plan which I have felt it my duty to submit. The Committee will perceive, that I have not drawn out that plan into details. It is my object to submit the *principle* only, feeling assured, that if it should be approved, no difficulty can arise in adapting it to practice. I may safely rest the defence of that principle on the arguments we have already heard. No subject has been more ably discussed, nor is there one on which it is now so difficult to advance a new idea. The arguments of the gentleman from Amelia, (Mr. Giles,) and the gentleman from Chesterfield, (Mr. Leigh,) have completely occupied the entire ground, and left to those who may follow them, nothing but the task of recapitulation. It is a task which I do not mean to undertake; for, arguments which have been used by them, would lose all their charms, and much of their weight, if detailed by me. I may be excused, however, for reviving in the minds of the Committee some of the leading topics of discussion, convinced that the able arguments, by which they were illustrated and enforced, will be revived along with them.

The advantages of a *plural* Executive, as it has been aptly called, have been so clearly pointed out, that the strongest prejudices upon that subject must have been beaten down. Whether we look to the responsibilities of the office; to the security which it affords against an abuse of its power and patronage; to the purity of its action, as a simple Executive of the laws; to its peculiar usefulness in retaining always in office some one or more familiar with the history of its transactions, and skilled in the details of its business; to the simplicity of its action, as tested by experience; to its ample guards against all usurpation of power; to its peculiar adaptation to a system, which professes to surround liberty with every rampart, which the

most watchful jealousy can contrive; above all, to the fact, that the history of fifty-four years does not afford us one instance of a usurpation of power, and scarcely one of serious abuse. When we consider all these things, as they were impressed upon us by the gentleman from Chesterfield, (Mr. Leigh,) we ought at least to pause, and to pause long, before we exchange such a system for any untried expedient. Let us not forget, that the practice under this system is established and settled. We have seen the machine at work, and we all know that it has worked well. We have not the same security for any other, and our wisest calculations upon that subject may be disappointed by the results.

We all admit, Mr. President, that it is necessary to provide a Lieutenant-Governor, on whom the duties of the Executive may devolve in case of the death, resignation, or absence of the Governor, or whenever, from other causes, the Governor may be unable to act. We have already felt the difficulty of assigning to this office any duties whatever, (when not acting as Governor,) unless we make him a Councillor of State. It is admitted, that he must have a salary, and we do not wish that his office should be a sinecure. The plan before us removes all difficulty upon this subject. A Councillor of State, and generally the ablest and most experienced among them, will be the Lieutenant-Governor. He will succeed to the office of the Governor, with all the advantages of ample information, derived from actual practice in the duties of the station. Here then, is the best material, out of which a Lieutenant-Governor can be made, a material already shaped to our hands, and one which does not cost the Treasury one additional penny.

Before I entered this body, Mr. President, I partook very largely of the hostility, which prevails so generally in the country, against the present Executive Council. I believe, Sir, that I did not duly understand the subject. I acknowledge, that my opinions have been changed by the arguments which I have heard in this Committee. I have now no other objection to the existing Council than this, that it is too numerous, and consequently too expensive. This objection I have endeavoured to remove, in the scheme before you. For myself, I am at all times in favour of the most economical disbursement of the public money; but, I would not lightly permit considerations of that sort to interfere with a wise and safe organization of an important department of the Government. True economy suggests the most liberal ideas upon this subject. I shall not fear, that the Treasury will be unprofitably burthened, if it be charged with no more than the necessary expenses of wise, safe, efficient and free institutions. It is not easy to pay too high a price for such blessings as these. Sincerely believing that the measure now before you will contribute its full share of these blessings to our common country, I commit it, without farther comment, to its fate.

Mr. Mercer suggested an objection to Mr. Upshur's scheme; as the advice of the Council was to remain, as at present, obligatory on the Governor, and as it was to consist of a Lieutenant-Governor and two Councillors, any two of whom were to constitute a quorum, if they were to advise him against his own judgment of what was right, he must comply: and thus it might happen that a Lieutenant-Governor and one Councillor, (constituting a majority of the Council,) might rule the Governor and the other Councillor, because the Governor was to have none but a casting vote. Here then, the Governor and one of his Council would be, technically, and in effect, a *minority*.

Mr. Leigh replied, that the Governor is not bound to do whatever the Council advise him to do; but is only restrained from doing what they oppose.

Mr. Mercer admitted the distinction, but insisted that the effect would still be as he had stated; and added, that the Lieutenant-Governor would be the most unfit person in the world as an adviser of the Governor, as he might have been his rival. He preferred the plan of Mr. Fitzhugh.

Mr. Wilson now renewed his demand for a division of the question, on striking out and inserting: it was divided accordingly; and the question being on striking out,

Mr. Scott expressed his wish to have the Council organized as Mr. Upshur proposed, but without giving the advice of Council a binding authority, in any respect, upon the Governor. He gave notice that if the motion to strike out succeeded, and Mr. Upshur's amendment should then be inserted, he should move so to amend it as to produce the effect he had mentioned.

Mr. Randolph suggested that the resolution proposed to be stricken out, contained, as now amended, two distinct propositions—the first he wished to retain, the second to strike out, as, according to the best of his knowledge and belief, it was not English.

The Chair decided that the question of striking out could not be so sub-divided, but the gentleman would obtain his object by moving to re-insert one of the clauses, if in connexion with other words.

The question on striking out, was then put, and decided in the affirmative—Ayes 47, Noes 46.

(Mr. Madison and Mr. Marshall, aye.)

So the Committee struck out the third resolution as amended.

And the question now being put on inserting Mr. Upshur's proposition as a substitute,

Mr. Scott moved to amend it, by striking from it the words "who shall perform the same duties as the present Council;" his object being to require the Governor to possess himself of the advice of his Council in all matters (except those of his military function as Commander-in-chief,) but not to bind him by it.

Mr. Randolph opposed the motion, on the ground that what the present duties of the Council were, was well known and established; but what the new duties to be assigned them were, could not be known till those duties had been expressly defined; and no man could tell whether the Government would remain in existence until then. He thought they had had experience enough to induce them never to depart from the law as adjudged and established. He was for what was settled and certain, and not for getting at *ignotum per ignotius*. If they said, that the duties of the Council were to be the same as they now were, the meaning was known and understood; but, if these words were to be stricken out, the Committee would immediately be at sea, and a long course of adjudged decisions would be rendered of no value.

Mr. Brodnax suggested that the Governor was now not compelled to follow the advice of Council, and would be still less if their number should be reduced from eight to two.

Mr. Scott explained his object to be, to leave the Governor free; and as to the uncertainty of meaning, it would be no greater than at present.

The question was now taken on Mr. Scott's amendment to Mr. Upshur's proposition for a Council, and decided in the affirmative—Ayes 51.

(Mr. Madison and Mr. Marshall, aye.)

Mr. Wilson moved for the rising of the Committee, but it was opposed by Mr. Claiborne, and lost—Ayes 34.

Mr. Scott moved further to amend Mr. Upshur's proposition, by striking out the parts in brackets, [see next page.]

It was agreed to without debate.

Mr. Scott then moved the following amendment:

"Resolved, That the Governor shall, before he performs any act in his official capacity other than as Commander-in-chief, take the advice of the Executive Council thereupon; but he shall be at liberty to adopt or reject the same."

Mr. Thompson was opposed to the amendment: thinking, that if the State were to pay so dearly for having this advice given to the Governor, the least he could do would be to treat it with sufficient respect to be governed by it.

Mr. Giles, being unable from hoarseness to go at large into the debate, suggested to Mr. Scott that the words of his amendment went far beyond what he presumed to be the purpose of the mover. It restrained the Governor from doing any act whatever without the advice of Council. Now, there were a multitude of matters of form which needed no such advice, such as the authentication of documents, &c. &c.

He expressed his regret that the gentleman from Fauquier, would not content himself with what had worked so well for fifty-four years, but would aim at making it absolutely perfect, and in the effort went to throw all into uncertainty and embarrassment. He thought the remark of Mr. Randolph entitled to more weight than had been given it, when he had spoken of changing long fixed, organic law. Mr. G. again briefly explained the present relations between the Governor and Council, and expressed his fears of the embarrassing effect of Mr. Scott's amendment.

Mr. Scott said, that he had come to the Convention persuaded of the propriety of abolishing the Council altogether; the gentleman from Amelia, (Mr. Giles,) had induced him to abandon at least one half of his heresies on that subject; but he could not, as yet at least, become an entire convert. It was very possible he had used words too large in their meaning. All he wanted was, to secure the principle of the Governor's entire liberty and responsibility.

Mr. Leigh referred to his former arguments in behalf of the Council as now existing. He was astonished that gentlemen, whose objection against it was, that it was a useless body, should propose another still more useless.

He remonstrated with earnestness against giving the Governor advice which he might disregard: illustrated its practical effect in making of contracts, appointments, and doing other official acts of the Executive. The patronage of the entire Executive of Virginia was large; it was not felt, because so much divided; but if concentrated in one person, (as it must be, if the Governor was perfectly free,) it would speedily be felt and become an object of intrigue and strife.

Mr. L. put, in a strong light, the consequences of composing the Council of the officers of Government, already loaded with business, and though competent to their own departments, very unsuitable to be counsellors of the Governor. He concluded by declaring himself opposed to the amendment of Mr. Scott, and his determination, if nothing better should be suggested, to vote away the whole Council.

On motion of Mr. Scott, the Committee now rose.

On motion of Mr. Leigh, the letter from the Speaker of the House of Delegates was laid on the table.

On motion of Mr. Scott, the Convention resolved to meet at 10 o'clock to-morrow, and take a recess during the session of the House of Delegates.

The House then adjourned.

WEDNESDAY, DECEMBER 9, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

In consequence of the indisposition of Mr. Monroe, Mr. P. P. Barbour was appointed President of the Convention, *pro tem*.

On taking the Chair, Mr. BARBOUR delivered a brief address in nearly the following terms:

Gentlemen of the Convention :

Whilst I tender you my thanks, for the manifestation of your confidence, in electing me, as President *pro tempore*, I cannot forbear to express my sincere regret, for the cause which has created the necessity of such an appointment.

In rising to address you, it is not my purpose to detain you, with any thing like a set speech : but only to say, that I promise zeal, fidelity, and perfect impartiality, in the station to which you have just called me. As to my qualifications, I shall say nothing ; for as on the one hand, self-commendation would be wholly unbecoming, so on the other, self-disparagement, is almost always regarded as uncandid. I proceed, then, to the discharge of the arduous duties which you have assigned me, with such ability as I possess, relying with confidence, upon your support, when I shall be right ; upon your indulgent consideration, when I may be wrong, and upon your disposition to do full justice to my efforts, to merit the honor which you have conferred upon me.

The House then went into Committee of the Whole, Mr. Gordon of Albemarle in the Chair ; and proceeded again to consider the third resolution of the Executive Committee, which is in the following words : "*Resolved*, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council"—together with an amendment moved thereto by Mr. Fitzhugh, and adopted ; and the question being on the following substitute for the whole, moved by Mr. Upshur :

"*Resolved*, That there shall be appointed an Executive Council or Council of State, consisting of a Lieutenant-Governor, and two Councillors, [who shall perform the same duties, and in all other respects hold the same relation to the Governor as the present Council of State.]

"The said Councillors shall be elected by the General Assembly, and shall continue in office three years, but may be re-elected from term to term. All vacancies occasioned by death, resignation, removal from the Commonwealth, or other disability, shall be supplied by the General Assembly.

"[Two of the said Council shall form a quorum, and in case of an equal division of the Council, the Governor shall have the casting vote.]"

Mr. Scott moved to amend it by substituting therefor the following : (being a modification of what he had offered yesterday,) viz :

"An Executive Council consisting of three members, shall be chosen by both Houses of Assembly, to remain in office for three years. They shall annually choose out of their own members a President, who, in case of death, inability, or necessary absence of the Governor from the Government, shall act as Governor. Their proceedings shall be entered of record and signed by the members present, (to any part whereof any member may enter his dissent) and laid before the General Assembly when called for by them. This Council may appoint their own Clerk, who shall have a salary settled by law, and take an oath of secrecy of such matters as he shall be directed by the board to conceal. At the end of one year after their first appointment, one Councillor to be designated by lot shall go out of office, and the vacancy shall be supplied by a new election. At the end of the next year, another Councillor, to be designated in like manner, shall go out of office, and the vacancy be supplied by a new election : and this rotation shall be continued in due order annually. The Executive Council shall stand in the same relation to the Governor as the Privy Council or Council of State under the existing Constitution, except that it shall advise merely, and not controul him."

Mr. Upshur said, that he should vote against the amendment of Mr. Scott, and against all other forms of a Council, unless based upon the same principle as at present. The argument was exhausted, and he should not attempt to renew it. According to

the plan now proposed, the Governor was at liberty to ask the advice of his Council or not, and when that advice was given, he was at liberty to follow it or not at his pleasure. What then was the office of a Councillor? what possible good could arise from having such a body, unless, indeed, it might be to keep a record, in order to shew when the Governor had consulted them, and when he had acted contrary to their advice. What was the value of such a record? *Cui bono?* Was it in order to censure the Governor, although the Constitution would allow him to disregard their advice? Nay, when that Constitution exacted of him as a duty to follow his own judgment, when the advice of the Council happened to coincide with his own will, might he not as well act without it? and if it did not so coincide, he was then bound to go against it. To constitute such a Council, would be feeing three men to sit by the Governor, with no duty on earth to perform but that of spies upon his action. What would such Councillors be? what would be their responsibility? The Governor would be left as perfectly at large, as if they had no existence. He might perhaps, for form's sake, lay some trivial matters before them, which he considered as of little consequence, and concerning which there could be but one opinion. But in all cases of serious responsibility, if the Governor had reason to believe that his Council differed from him in opinion, he would not ask their advice at all. But suppose that the Constitution should make it obligatory upon the Governor to apply for the advice of his Council in all cases, the result would be a great waste of time: for, as the gentleman from Amelia had stated, there were a number of cases of the mere forms of office, such as the authentication of papers, &c. in which the Governor acted on his own responsibility. But under such a regulation, he could not even sign the commission of the lowest officer, nor authenticate the most ordinary paper, without first calling his Council together. They must advise in all cases whatever, but in many cases it would be but pouring advice into deaf ears. Such a Council he should consider as an absolute nuisance, and should therefore vote against the amendment.

Mr. LEIGH of Chesterfield, now rose, and spoke nearly as follows:

Mr. Chairman,—When this subject was before the Committee the other day, I delivered my sentiments upon it somewhat at large; and I do not mean to inflict upon the Committee a repetition of what I then said. But, having always regarded the Executive Council as a most wise and valuable institution; an institution, which has had the rare felicity to accomplish, fully and exactly, the purpose designed by its founders, of weakening the Executive power by division, and thus rendering it incapable of mischief, without impairing its capacity to do good, and the singular fate to be condemned for the very reason that it has answered its original design—to be chiefly objected to, because it destroys the independent power, and consequently (it is inferred) the responsibility of the Governor—I am bound to make every effort to preserve it. I think there are some views of the subject, which the gentleman from Fauquier (Mr. Scott) has not yet fully considered, and which it behoves him, and all of us, to consider well, before we consent to abolish the principle of this institution. I am perfectly aware, that what I have to say, will have no weight whatever with those who are opposed to a Council in any shape, and who, on principle, prefer a single to a plural Executive. To such gentlemen, I have no remarks to offer worthy of their attention. There is a radical diversity of opinion between me and them; and I despair of producing any impression whatever on their minds. I address myself to those, who are of opinion, that to demolish, is not the best way to mend; who believe, that the work of true reform consists in the correction of abuses, and the prevention of anticipated evils; and who, in pursuit of those ends, will give their care to the preservation of all that is sound and valuable in our political fabric. With gentlemen of this description, (and I believe there are many such in this Assembly), it is possible what I have now to say may have some influence to save the Executive Council from destruction.

It must have occurred to every man who has bestowed any thought upon it, that the wise construction of the Executive, is the most difficult problem in forming a Republican Government. In a Government like that of Virginia, intended chiefly, if not wholly, for internal purposes, the Executive must be organized on principles altogether different from those that should obtain in a Government designed for the management of foreign affairs—in which, every thing must be regulated with due regard to the relation which the nation is to sustain to other nations. It is notorious, that the Convention, which framed the Federal Constitution, found in the formation of the Executive Department, the principal difficulties they had to encounter. Two objects were to be accomplished—both of vital importance—to preserve a Republican form of Government, and therefore to discard every thing like hereditary power; and to provide such an Executive, as should be suited to the management of the foreign relations of the country, in war as well as in peace. For this latter object alone was the President of the United States armed with powers, such as hardly any man in the Federal Convention would ever have thought of giving to the Governor of a State. *We* are not charged with the duty of forming an Executive suited to conduct foreign

relations—foreign intercourse, negotiation and war: and so long as Virginia remains a member of the Federal Union, we shall wisely (for we can safely) make her Governor a mere agent to execute the laws, without any independent power whatever. We were told, indeed, by the gentleman from Frederick (Mr. Powell) that we ought to look forward to a different state of things—although he assured us (and I believe him) that none would deprecate such a state of things more than himself—that we ought to look to that disastrous state of things, when our Federal Union shall be dissolved; in which event, the State Executive ought to be indued with powers to manage affairs with foreign nations, since our sister States will then stand in that relation towards us. But, Sir, whosoever shall go to work now, to form an Executive adapted to such a state of things, as cannot happen until the bands of this Union shall be dissolved, and new combinations of the States shall be formed—if all shall not be consolidated into one vast empire, without any reference to existing boundaries—when we may have one Government North of the Hudson, another between the Hudson and the Potomac, another in the South, and another in the West—will undertake that to which no human wisdom is competent. He will attempt to provide for a state of things, which depends wholly on the providence of God, who may save us in his mercy, or punish us in his wrath. As to human agency, when that direful state of things, which gentlemen talk of so familiarly, shall come upon us—when this great political Confederacy shall be broken up, and separated into its original atoms, and new political beings shall rise out of its ruins, give me leave to say, that the exigencies of the times must and will dictate the forms of the Executive Government; and, just as surely as man must still remain man, the sword, that most energetic of reformers, will have a large share in settling the new forms of Government, whether military despotism, or mixed monarchy, or a Republic. As no man can foreknow our condition, so no man can now provide for it; one thing only is certain, that the sword will be, or will essay to be, the principal law-giver. And then, our only hope for the preservation of freedom, will be found in the universal prevalence of the common law, with its open courts of justice, *viva voce* evidence, and jury trial. In constituting an Executive for Virginia, I can only look at her present condition, as one of the members of the existing Federal Union: I will not, because I cannot, look to a future and wholly altered state of the Commonwealth. To me it seems, (I mean no disrespect to those who differ from me in opinion), that man could undertake no task more presumptuous, none which lies farther beyond the bounds of human wisdom, than to make provision in 1829, for a dissolution of the United States, supposing it shall happen a hundred, fifty, or even five years hence. No, Sir—our duty is to frame an Executive for Virginia, as Virginia is now; an Executive adapted to the ordinary administration of our laws, and to the conduct of our internal affairs. What sort of an Executive ought that to be? I answer, one possessing the smallest degree of power consistent with the due execution of the laws. If the Executive has power enough for that purpose, we want no more. That is the problem we have to solve. Now I pray gentlemen—instead of exercising their ingenuity, in forming new and untried plans, and calculating the effects of them—plans, concerning which all reasoning at present must be mere speculation—plans, which at last can only be proved by experience—to ask themselves, whether we have not a system now, which experience, and long experience too, has approved, as well adapted to our circumstances, and perfectly fitted for all useful practical purposes? And then I ask them, as statesmen—and, especially, I ask my friend from Fauquier (Mr. Scott) for whose practical judgment I have always the utmost deference—whether any prudent statesman ought to be willing to discard the old and tried system for any new project, however plausible? This is the true and fair state of the question. Here is the ground on which I take my stand. I find an existing Executive in Virginia, which, under all circumstances, amidst all the difficulties of war, and, in peace, amidst the utmost violence of party contests, has well performed its part—upon which all-trying time has passed its judgment—which never, in a single instance, has been guilty or even charged with corruption, or usurpation, or attempt at usurpation. I doubt whether more can be said for any Executive on earth: Sir, it is rare praise; but it is no more than its just due. (I shall not undertake to defend the existing Government—I would not undertake to defend any set of men, either in public or private stations—from the charge of having committed errors). And now we have an amendment offered to our consideration, which proposes to abolish the fundamental principle of this Executive. I trust in the good sense and prudence of this body, that it will not be abolished—that it will only be reformed. Reform is obvious and easy; and I am ready for reform; but not for destruction.

There is a set of gentlemen—the phrase may be offensive, which I do not mean, and I retract it—there are several gentlemen in this House, who are of opinion, that we ought to provide for the Governor an advisory Council—a distinct body so called, whom it shall be his duty to consult, without making it his duty to follow or respect its advice: while others think, that the Heads of Departments should be required to

advise the Governor, when he shall think proper to ask their advice, leaving him at full liberty to take such advice or not, as he thinks proper. I suppose there must be some other Heads of Departments than those we now have, which are to be created for the purpose. The gentleman from Fairfax (Mr. Fitzhugh) intimated an opinion, the other day, as the ground of his preference for this Cabinet Council of Heads of Departments, that the Governor ought to be made more independent of the Legislature, than he now is. I might possibly agree with the gentleman, if he had assigned any reason, why he wished to have the Executive more independent; if he had shewn any good purpose which would be thereby effected. This he did not even attempt. There exists, I think, a misunderstanding of that principle of the Bill of Rights, which declares that the Departments of Government ought to be kept separate and distinct. It does not mean, that the Executive ought to be wholly unconnected with, and independent of the Legislature, or that the officers of the Executive should not be appointed by the Legislature. It means no more than this—that the same functionaries, who exercise the whole Executive power, shall not at the same time exercise the whole Legislative power. The principle is not new: it was not new, when it was embodied in the Bill of Rights: it is a maxim of Montesquieu; and you will find it thoroughly examined and explained in the 47th number of the *Federalist*. Why is the Executive to be made independent? to enable it to resist the Legislative will? to perform any act without the Legislative authority? There is not a man here, to whom if you put the question, “Will you have a Governor more independent, in order that he may do any material act without the sanction of law?” who will not at once answer, No. Why then should the Governor be more independent? The least reflection must satisfy gentlemen, that they cannot contrive to make him more independent of the Legislature, unless they give him power to resist the Legislative will, to omit to do what the laws require to be done, or to do what the laws do not direct. I repeat what I have said once before, that to give any such independence to the Governor, as shall enable him to do any official act without authority of law, is to mingle a spice of monarchy in the Constitution. I use the word in its genuine English sense. To constitute monarchy, it is not necessary that the office of Chief Magistrate should be hereditary, or that it should be held for life: wherever he has a rightful power to act without authority of law, there is pure monarchy, though he rule but for a single year, or for a day. The Constitution of the Executive of a Government intrusted with the foreign relations of a nation (I repeat) ought, in the very nature of things, to be widely different from that of the Executive of a Government intended to manage the internal concerns of a State. We want an Executive of the latter kind. The other ought to be armed with larger powers. If I were a subject of Great Britain, I should uphold the monarchy: I doubt whether that nation could contend with the military spirit of France, without a monarchical Executive. If her form of Government were like that of Virginia, or of the United States, exposed as she is to sudden attack from a neighbour so near, so powerful, so active, so warlike, she would hardly be able to defend herself in any sudden emergency; and the agitation of every election would expose her to dangers from without, consequent upon commotions within, which would soon end in her destruction. The Government of France has been, at all times (even the republic of France was) a military Government, dangerous to all Governments in the neighbourhood, and particularly dangerous to free Governments. The republican institutions of the United States have been dictated by the character of the people, and the peculiar happiness of their geographical situation. But if I had to form an Executive for the United States, I should not constitute it like the Government of Virginia: I should feel the necessity of giving it more power, in order to fit it to its ends. And here is the difference between the principles I maintain, and those which the gentleman from Frederick (Mr. Powell,) would have us act on: he does not, I think, pay sufficient regard to the peculiar functions of the State Government of Virginia, considered as a member of the Federal Union. I hold politics to be the science of circumstances.

Let us now see what will be the immediate effect of the amendment proposed by the gentleman from Fauquier (Mr. Scott.) There is something equivocal in the latter part of it, which I am sure he does not intend, and I only mention it that he may make it explicit. It proposes a Council, whose wisdom the Governor shall be bound to call to his aid, without being bound, when he shall get their advice, to comply with it. Now, I ask that gentleman, in the first place, whether he does not perceive that this arrangement would, at the Governor's will and pleasure, place the whole Executive power of the State in the Governor alone? Does he not see, that the practical operation of the principle would be to make the character of that entire Department of the Government, dependent on the personal character of the Governor? If he should chance to be a modest man, much more if a timid man, (and political courage is much more rare than personal), he will follow the advice of his Council in all cases, and shield himself under it from all responsibility. But if, on the contrary, the Governor should be of a firm and spirited character, and much more if there should be

any obstinacy in his disposition, he may indeed ask the advice of his Council, but when he has received it, he will give it to the winds. And then comes the question put by the gentleman from Northampton (Mr. Upshur), Will you have this advice of Council recorded, only that it may appear that the Governor disregarded it? Would you impeach him for not abiding by it, when you have expressly provided, that he may disregard it, if he pleases to do so?

I ask my friend from Fauquier to consider another thing. There were several valuable purposes, which the framers of the present Constitution designed to accomplish by this institution of the Executive Council: and one of those objects was, to preserve a continuity of knowledge, in the Executive Department. If, to accomplish this object, we shall abolish the Council, and provide that the Executive duties shall be distributed among different Departments (which some gentlemen think the most eligible plan), each of the Heads of those Departments may acquire a knowledge of the business of his particular Department; but the duties of all will be merely ministerial, almost mechanical; none of them will be statesmen; none of them will acquire a general knowledge of the whole business of the Executive. But that is what is wanted. Besides, to create Executive Departments, merely to avoid the erection of an Executive Council, were an awkward expedient. Then, as to an advisory Council, as it is called—a Council to advise the Governor, and a Governor bound to ask but not to take advice—it is obvious, that the members of such a Council will lie under little or no responsibility, and will have hardly any motive to apply themselves to the acquisition of a general knowledge of Executive affairs; and that, unless the members of the Council, or some of them, remain in office longer than the Governor, every Governor will have to commence his administration, without any knowledge of the details of Executive business, and with a Council to advise with, as uninformed as himself. Gentlemen who have not reflected on the subject, cannot form an idea of the inconvenience. If you will ask any man that has ever filled the office of Governor of Virginia, whether when he first came into office, he did not rely almost wholly upon his Council, for all the details of business, I venture to affirm, that his answer will be in the affirmative. It must be so in the nature of things.

Sir, our fathers took it into their heads (very simple heads as some think, very wise ones in my opinion), that, as it would be necessary to confide much patronage to the Executive, the only way to render it harmless, would be to divide it. But if the scheme of the gentleman from Fauquier shall prevail, all public contracts, and all Executive appointments, will depend absolutely upon the will of the Governor. The Council is merely to give advice: it is to possess no actual power or controul: of course, the whole patronage of the State will be vested in the hands of the Governor. Look at the amount of patronage, which is now exercised by the Governor and Council, almost without being felt or known to exist. Not to enumerate the appointments to all the lesser offices, I only desire gentlemen to reflect that the Executive of Virginia lets out all contracts for public works. This building, in which we are now sitting, was erected by contracts made by the Executive: so was the Armory: so was the Penitentiary. The plan of the gentleman from Fauquier will, in effect, place all this patronage in the hands of a single individual.

Much has been said of Legislative caucuses, got up to dispose of offices: but I never heard of any caucusing about the election of a Governor, for the simple reason that his office has no emolument to tempt avarice, no power to tempt ambition, no patronage to give influence. But give him the patronage, which this amendment proposes to give him; let him be the person to whom alone all must look for profitable employments, and more profitable contracts; and you will soon see a different state of things. It will make little odds, whether he shall be elected by the people or by the Legislature: the increase of his power and patronage, is the substance of the change. And the first effect of that change will be, that every newspaper in the Commonwealth will be filled with what they call discussions of the merits of the several candidates for the office. Let any gentleman look at the newspapers of Pennsylvania, or of New-York, or of Kentucky, for some time previous to an election of Governor, and note the accounts there given of the candidates for the office. If you look at the Pennsylvania papers, (as I have often done out of curiosity), which have been opposed to the candidates that have been elected, and take their word for it, you must believe, that, since the time of M'Kean, there has not been a Governor in that State, who was not the veriest fool in existence. But look at the papers on the other side, and you will find the same persons metamorphosed into paragons of wisdom. It is a peculiarity of my nervous system, that I loathe all strong perfumes almost as much as stinks, (I can think of no politer word that would convey the thought in its full force); and I do not know which is the more offensive to my moral sense, fulsome panegyric, or coarse abuse. New-York indeed does not appear to have been so cursed with fools for Governors, as her neighbour Pennsylvania, (I mean according to the newspapers); but she seems to have been worse off; for, all her Governors, without any exception, have been the rankest knaves they could possibly find. Sir, it was the saying of a very

wise man, that the Government of these United States was of a kind never yet described; that it was a newspaper Government. The newspapers not only claim to discuss the merits of all public measures, and all competitors for office, but to dictate measures, and to direct our elections—the only check on their power, consisting in their rival claims—these applauding their favorites to the skies, and those damning them to hell without remorse. If any think this an exaggeration, I only ask him to remember the late Presidential election. I am, Sir, particularly anxious to avoid all newspaper agency in the election of the Chief Magistrate of Virginia; and, with that view (among others) to reduce the power and patronage of that office to the lowest point I possibly can.

There was published, not long ago, an entertaining work, which public rumour ascribes to one of your own constituents,* called *A voyage to the Moon*; in which the voyager gives an account of an election there which he was present at. He saw drawn up on the public square, in opposite confronting ranks, between which the candidates, and their friends, and all the electors, were obliged to pass, a set of little fellows, called *Syringe boys*: each with a syringe in his hand, and two bottles hanging on either side; one full of a black liquor, foul and stinking—the other containing a white and highly perfumed liquor, so sweet to the smell as to produce faintness. The syringes were their weapons, and the bottles contained their ammunition. When either candidate, or any of his friends appeared, the syringe boys of the one party, were sure to empty their phials of perfume upon the side of his person next to them, and those of the other to pour torrents of the black liquid upon him—so that the odour in which you would find the party squirted at, depended on the side on which you happened to approach him. If nobody else came in their way, the opposing ranks turned their arms against each other, just to keep their hands in. And when the voyager asked why these mischievous boys were tolerated, he was told, that it was an ancient practice, to which the people were wedded, and nobody dared to disturb them. The voyager does not (that I remember) note two peculiarities in the lunar syringe boys, which mark the conduct of our sublunary gentlemen of the squirt—the one is, that, upon the great body of electors, our syringe boys never squirt any but the sweet water, though they go near to drown them with that—the other, that when they direct their little engines against each other, they generally fill only from the black bottle; so that approach one of them which side you may, you are almost sure to find him in bad odour.

I have, in common with the rest of my countrymen, been always in the habit of regarding the freedom of the press as the most inestimable of blessings—but there is no good without alloy—the freedom of the press is indeed indispensable; but the license into which our daily press has degenerated, is an evil almost beyond endurance; and, after long observation, and anxious reflection, I find myself at a loss to say, whether its freedom is more a blessing, or its licentiousness a curse. Our press is active and powerful alike in disseminating truth and error. In one view, I am ready to say, that our free institutions could not exist without it; in another, it seems to me to be the poison of free Government. In my reflections on this subject, my mind has often recurred to those lines of Pope's Homer:—

“Two urns by Jove's high throne have ever stood;
The source of evil one, and one of good—
From these the cup of mortal man he fills;
Blessings to these, to those distributes ill;
To most he mingles both—the wretch decreed
To taste the bad unmixed, is curs'd indeed—
Pursued by want, by meagre famine driven,
He wanders outcast both of Earth and Heaven!”—

I forget the rest; but this is enough for my purpose. To nations, in which the press is enslaved, Providence has filled their portion from the bitter urn. A free press, bold without license, active without being factious, busy without being venal, is meted from the urn of unmixed good. But licentiousness, faction and corruption, in the press, are bitter waters. Every man that loves his country, ought to pray Heaven, that they may not prevail to overflowing; every wise Statesman ought to do his utmost, to prevent another drop from being mingled in our cup. There is too much already—too much! Let us be careful not to aggravate the vices of the press, by bringing them to bear on the election of the Chief Magistrate of this ancient and peaceful Commonwealth; which we shall surely do, if we increase the patronage, the influence, the importance of the office. The Executive power and patronage cannot be annihilated: but they may be rendered innocuous by dividing them: they have been rendered innocuous, under the existing Constitution, by the institution of the Executive Council; an institution, which having worked exactly according to the original de-

* Mr. Gordon of Albemarle was in the Chair.

sign, has afforded the surest proof of the wisdom of its founders. I know of no other political institution that has proved the same in practice as in theory.

I have been told a thousand times, since this Convention assembled—I do not mean in open debate, nor do I mean that I have been so told by the gentleman from Fauquier—for he avows himself a convert, in some measure, in respect to an Executive Council—I have been told, that the Council is a useless body, a set of loiterers, whose office is little better than a sinecure. I shall not reflect on the motives of this denunciation: I shall only say, that my observation and experience do not justify the truth of it. I shall not affirm, that this Council has always been filled with the ablest and most experienced men in the State: but I do affirm, that it has always been filled by men competent to their duties; and that those duties have been, in the main, wisely and prudently, and always honestly, discharged. The office has been held by men, two of whom have since filled the office of President, and one that of Chief Justice of the United States. The ablest men of Virginia have been in the Council: and I shall take occasion to say, that the present Lieutenant-Governor (I mean the gentleman, who, being the oldest Councillor, is charged with the duty of Lieutenant-Governor,) is, in point of capacity, abundantly fit for the management of the affairs of this State, or of any other State in the Union; and, in point of firmness, integrity and virtue, there is not a man in the Commonwealth that would be disparaged by a comparison with him.

Shall we abolish this institution, and substitute another in its stead, on mere speculation, and by way of experiment? It does not become the wisdom of the gentleman from Fauquier, to make this experiment upon us. I protest against any experiments being made on me and my children. I regard that whole system of political experiments with the utmost horror and alarm. I know that I am now free; I suffer no oppression: I ask for nothing more. No man has a right to expect more from any Government, than to be left to carve out his own happiness, as best he can, in peace and security.

I think the Executive Council may be re-modeled to advantage, without touching the principle of the institution. Half the number of Councillors may be dispensed with; the principal benefit of which will be, that the Legislature will then have it in its power to double the salary of those who remain, without any additional expense, by dividing among four the same sum that is now paid to eight. I would also change the method of removing the members of the Council from office. I have been a member of the Assembly in one of the *scratch* years (as they are called) when, without offence, or suspicion of offence, two members of the Council were to be removed by ballot: and never have I experienced more pain, than I suffered in witnessing, and bearing part, in the *scratch*. I saw men of honourable feeling and of high worth, subjected to the deepest mortification. I wish to get rid of that painful process. In order to effect this, after reducing the number of the Council to four, and empowering them to appoint one of their own number to act as President of the body, and to be charged with the duty of Lieutenant-Governor, I would have each Councillor elected for four years, and provide that one of them should go out of office every year. I would make the term four years, on the supposition that that of the Governor is to be three years. But if the Governor's term is to be only two years, then I would make the term of a Councillor three. The plan is simple, and will be readily understood without more explanation.

I have an objection to the details of the plans, both of the gentleman from Northampton, and of the gentleman from Fauquier, (Messrs. Upshur and Scott.) It is to the number, *three*. The Governor is not to be one of the Council, but is to have three Councillors. Suppose one of these should die, then, if another should be sick, the Governor would be without a Council. Would this be a rare casualty? Certainly not, when we consider, that a Councillor may often be taken from the top of the Alleghany mountains and brought to Richmond—to a climate very different from that to which he has been enured.

I prefer a Council of four to one of three members—but on that point, I shall not be pertinacious. I am chiefly anxious that the Council may be preserved, with the same relation to the Governor which it bears at present. And I trust and hope and pray, that this body will not, for the sake of change, for a mere chance of bettering our condition, give up an institution, which has been found to answer so well the good purposes for which it was founded.

It being now near 1 o'clock, the Committee rose on Mr. Fitzhugh's motion, and the House adjourned to give place to the sitting of the House of Delegates.

At 1 o'clock the Convention again convened, and immediately went into Committee of the Whole, Mr. Gordon in the Chair.

Mr. Scott then rose and went into a vindication of his scheme for a Council, and a reply to the objections which had been urged against it by Messrs. Upshur and Leigh.

He had had no purpose to bring on such a discussion—and the state of his health forbade him to go very extensively into debate. He adverted to the stage of the debate

when he had moved his amendment. When the utmost efforts of the friends of the present system, having failed, it seemed that there must, either be no Council, or one which the Governor might consult or not, as he pleased. Their arguments had gone far to convince him, that there ought to be a Council of some kind, and he sketched out his plan as a middle course. As it seemed agreed on all hands that there must be a Lieutenant-Governor, he thought they might go a step farther, and add two other persons to make a Council. Instead of a Lieutenant-Governor *co nomine*, he wished these Councillors to choose one of their own number, who should be so in effect. His plan differed from Mr. Upshur's in taking away from the Council the *veto* it now exercises. He was in favor of giving to the Governor the whole benefit of the wisdom and advice of his Council, but not of binding him to be governed by their will.

Mr. U. he said, had misconceived him in supposing that the Governor was not to be obliged to ask the advice of Council—he was in all cases to ask for, and receive it. But the gentleman from Northampton had asked, why pay so much for advice and then leave the Governor at liberty to reject it? In reply, Mr. Scott asked, if this was not done in the daily affairs of life? Did not men pay for the advice of a physician, but were they obliged to take it, even if he prescribed a dose of arsenic? Was advice worth nothing, unless a man was imperatively bound to pursue it? Would gentlemen tell a Commander in Chief that he must never summon a Council of War, unless he meant to submit to the opinions of his officers.

He expressed the pain it gave him to differ from his worthy friend from Chesterfield. But he had come to this Convention, impressed with the belief that the Council was not only useless, but positively injurious; and such was the opinion of a large portion of the citizens of the Commonwealth. The gentleman from Chesterfield, had not seen the operation of the Council; he had only been pained by witnessing the process of the “scratch:” but Mr. S. said that his people considered that a mere scratch, indeed, in comparison to the evils which had grown out of this part of the Government. He was about, however, to prefer no bill of indictment; he had practised at home for many years in the character of public prosecutor, and he well knew how hard it was often, to convert, even in the plainest cases, and with process in his hands to compel the attendance of witnesses; he should not think of exercising his function in this Committee, when the Governor and Council were to be the prisoners at the bar, and the judges before whom he was to plead were already invincibly prepossessed in favor of the parties accused. But he might appeal to many members of the House who were acquainted with the inability of this part of the State machinery, and how badly it had worked in many cases. It was natural that a gentleman who had entered with all his constitutional ardour into the defence of the existing Government in all its departments, in all its forms, and all its past and present officers, to be very sensitive when the minutest feature of either was assailed: not an excrecence could be lopped off but all his fears were excited at once. He (Mr. S.) would change, but only to improve, and he thought this Department of the Government did require the pruning, though not the amputating knife.

After noticing the irrelevancy of much that Mr. L. had said to the question before the Committee—the gentleman had asked whether they would have the Governor without advice? and if not, whether he was to look to his private friends or official inferiors and dependants, or to a public and responsible body? He answered, to a body public and responsible; and such an one he had provided. He would have the Governor look neither to those on whom he was dependant, nor on those who were dependant upon him; but to a Council obliged to advise him, and responsible for their advice. The recording of the acts of the Governor, and the publicity of all his transactions, so pithily adverted to by the gentleman from Charlotte (Mr. Randolph,) whom he was sorry not to see in his place, and who had reminded the Committee that publicity was the safe-guard of virtue, were all secured by the plan now proposed. It had the excellence of perpetuity too, which had been so well insisted upon by the gentleman from Amelia and his friend from Chesterfield. They had been told by the present incumbent of the Governor's Chair, that the Executive of Virginia was the most responsible Executive in the world: be it so: all that responsibility was preserved unimpaired by his amendment. All the valuable characteristics of the present system were retained, untouched. But he was told that such a Council as was proposed was an anomaly; but he thought that remark applied rather to a Council like the present, where the advisers were made paramount to the party advised. He was asked if he would put all the power in the Governor? He answered yes: but now it was all in the Council. And the question was, whether it was better to put the power, with a check (though not a control) over it, in the Governor, or, to place it, without any check at all, in the Council? It had been said with great truth that the Governor could now shelter himself from responsibility behind his Council. He had power, it was true in himself to stand still; but if he took one step, he must be shielded by the advice of his Council.

Mr. S. said, his plan appeared to him to strike the golden mean, between a Governor without any Council, and a Governor with a Council who ruled over him. At present, he may submit measure after measure, but till he varies his proposition so as exactly to hit the views of his Councillors, the wheels of Government must stand still. He said, he had heard this complained of by those who had filled the office of Governor, and he had learned from the gentleman from Orange, (Mr. Madison,) that one Governor of Virginia had felt the check so severely, as to have remarked that "according to the theory of the Constitution, Virginia had *one* Governor, and *eight* Councillors; but practically and in reality, she had *eight* Governors, and *one* Councillor." The Governor of Virginia now stood, he had often thought, much in the condition of a very worthy and renowned Governor of whom he had read; he meant Governor Sancho—who had at his table, one Dr. Pedro Positive, native of the town of Snatchaway, who, as soon as the Governor had fixed his eyes upon a favorite dish, would touch it with his wand and cry, "no, not that," till this worthy Governor had been like to lose his dinner entirely, because no dish of which he attempted to eat, happened to please the Doctor. The Governor proposes one plan; the Council disapproves; he offers another and another and another; and while they are disapproving, the wheels of State stand still.

The question being taken on Mr. Scott's amendment, it was *rejected*.—Ayes 44, Noes 48.

(Messrs. Madison and Marshall in the affirmative.)

Mr. Fitzhugh now moved as an amendment, "that the Executive Council ought to be abolished."

The question being taken, it was *carried*.—Ayes 50.

So the Committee have voted to abolish the Council of State.

The Committee then proceeded to consider the sixth and seventh resolutions of the Executive Committee, which read as follows:

"*Resolved*, That the commissioned officers of militia companies be nominated to the Executive by a majority of their respective companies.

"*Resolved*, That the field officers of regiments, be nominated to the Executive by a majority of the commissioned officers of their respective companies."

Mr. Trezvant said, that as both these resolutions had been adopted on his motion, he would take the liberty of proposing an amendment which he thought better calculated to attain the object he had in view. He presented it in the words following:

"*Resolved*, That the mode of appointing militia officers ought to be provided for by law: *Provided, nevertheless*, That no officer below the grade of a Brigadier General should be appointed by the General Assembly."

Mr. T. accompanied the amendment by a few remarks in explanation, going to shew that some change in the present mode of appointment was desirable, but that if the experiment he proposed should on trial be found to produce worse results than the present system, the step could be retraced.

Mr. Macrae moved the following amendment to that of Mr. Trezvant:

"*Resolved*, That the general officers of the militia shall be appointed by the Executive, by and with the advice and consent of the Senate, upon the nominations of the field-officers of the militia in such districts, and in such manner as shall be prescribed by law.

"*Resolved*, That all other officers of the militia shall be appointed in such manner as shall be prescribed by law."

Mr. Macrae expressed his concurrence with the views of the gentleman from Southampton, in respect to the inferior officers. He thought the present mode of appointment, judging by its results, as bad as any that could be devised; and, therefore, he was willing to make the experiment of elective nominations; but, as experience, the only test of human institutions, might demonstrate the latter to be even worse than the former, he was disposed to subject the whole matter to Legislative control and discretion. The military elections in Pennsylvania, had resulted in one instance, in the choice of a Colonel Pluck—whilst here, perhaps, it might be retorted, our County Court recommendations had given us many a Colonel *No-Pluck*, or *without pluck*, as the experience of the late war had unhappily manifested. The Constitution of New York, provides for the election of the inferior officers of the militia; but, distrusting this mode of appointment, it authorises the Legislature to substitute any other in its discretion. So that, upon the whole, it seemed to be most expedient to abolish the present Constitutional restriction, as to the mode of appointment; and to leave it to the Legislature, to provide such as circumstances shall recommend to its adoption.

As to the general officers, he adverted to the high importance of selecting men of the best *military* qualifications; and he declared, that he considered the election by the General Assembly, as not adapted to that end, and as resulting in practice, in many exceptionable appointments. He claimed to be a reformer, but he was no theorist; he should go for the principles that would work well; he would deduce them

from facts, supplied by history and experience; and he would apply them with a view to practical results. He asked, if it was not the tendency and effect of the present system, to choose politicians rather than soldiers; to prefer civic merit to military endowments; and to make it the most essential qualification, to attain the station of a Virginia general, that he should be a member of the Legislature? It must be so from the nature of things, and the ordinary workings of human nature: the electors have no opportunity of making a fair comparison of the pretensions of the rival candidates; and they, therefore, readily yield to the influence of the *esprit du corps*, or of personal friendship or esteem, contracted during their association in public duty. The Legislature had proved itself to be wholly incompetent to the due exercise of this elective function, by the appointment of popular men, who, however amiable and respectable, were not recommended by either military service or military talent; of men, who not only had

“Never set a squadron in the field,
Nor the division of a battle knew,
More than a spinster,”—

But were incapable of drilling a sergeant's squad; and, perhaps, had never even held a commission. In these remarks, he disclaimed any particular allusion. He spoke only of the general tendency of the system; and he doubted not, that there had been many honorable exceptions.

But he utterly disapproved of the principle of rewarding military service by civil office; and he thought the converse equally true, and that civil service ought not to be rewarded by military office. He thought that military men were the best judges of military merit, and that the best depository of the power of nominating our commanders, would be the field-officers of regiments, who, however deficient many of them must be from the want of experience, will always embody the mass of the military talent and spirit of the State. The nominating power ought to be lodged in the hands of those having the best capacity and opportunity to judge of the qualifications of those recommended to office; and he asked whether this function could be properly performed by the members of the General Assembly who are civilians, and not soldiers, and who have no means of comparing the pretensions of the officers from whom in general the selection ought to be made, or other candidates presented for their choice? Emulation was the soul of a soldier; and the hope of promotion, the great incentive to military energy; and these he believed would be much more strongly excited among our officers, when they knew that their advancement depended upon the estimates formed of each other from personal observation, or certain information, and not upon holding a place in the Legislature. He proposed to give the Governor and Senate, a negative upon the nominations, with a view to the correction of those instances of erroneous judgment, or personal injustice, which would occur sometimes, wherever the power of selection might be lodged. He had made the Senate participate in the exercise of that negative at the instance of others: he was content to confide it to the Executive alone; and he hoped that those who objected to his plan, merely by reason of the action of the Senate, would move to strike out that feature of it. His plan was recommended, too, by its consonance with those great and pervading principles of our Constitution, which had operated so happily for more than half a century; namely, the division of patronage and local nomination for office, wherever those nominations could be best exercised upon local knowledge. These principles were as applicable to the Legislative, as to the Executive Department of the Government. The corrupting influence of the patronage of the Executive of the United States over the Legislative Department, had been the subject of loud complaint and open denunciation from high authority; and it had been proposed to remedy the evil, by making members of Congress ineligible during the term for which they shall be elected to any office in the gift of the President. It has been thought that the same sort of influence might exist where the persons exercising the patronage might bestow it upon themselves; and, therefore, the Constitutions of some of the States provide that members of the Legislature shall, during the period for which they shall have been elected, be ineligible to any office, the appointment to which is confided to the Legislature. He was not prepared to go this length: but he doubted whether the disqualification did not in effect, rather enlarge than limit the field of choice; and whether the considerations which had recommended it to the adoption of other States, might not recommend it to ours. Experience, he said, was his guide in all political reforms; and he referred to the examples of other States, where the plan of elective nominations of the military had prevailed. He referred particularly to the militia of Tennessee, who elected their own officers: those gallant militia, who, in so many hard-fought battles, had acquired immortal fame for themselves, and shed imperishable renown upon our arms; who, with their compatriots, in an hour of gloom and despondency, had, on the plains of New Orleans, terminated the late war in a blaze of glory which illuminated our political horizon, and made every American citizen proud of his country: those militia who were led by their own chosen commanders—a Coffee, a Carroll, and a Jackson!

Mr. Trezvant, after stating the difference between Mr. Macrae's scheme and his own, expressed his preference that the appointment of the higher, as well as the inferior officers, should remain with the Legislature. It was true that that body could not have a personal knowledge of all the candidates; but no more could the Governor and Senate.

Mr. Macrae here explained: His scheme did not leave either to their personal knowledge of the candidates, but provided for recommendations from the commissioned officers.

Mr. Trezvant replied: If so, he saw no reason why the choice should be confined to one House only: why not give it to both branches of the Legislature? There would be, he thought, a greater prospect of a good selection.

Mr. Macrae suggested, that according to Mr. Trezvant's scheme, the Adjutant General would not be chosen by the General Assembly. The nominating body was the best qualified to judge, and there should be a negative in some superior body. He was for putting that veto in the Governor and one branch of the Legislature; he had precedent for this in the Government of the United States. He thought it better to leave it with the advisory, and more permanent body than in the popular branch. But some might desire that this veto should remain in the Governor alone: on this point he should not be very strenuous, and an amendment to that effect could be made.

Mr. Trezvant replied, that the case of the Adjutant General could readily be provided for, by striking out "Brigadier," and inserting "Adjutant."

As to the recommendation of the regimental officers, this would be more of a personal than of a military kind; for they were not known to each other in their military character; they were seldom, in time of peace, brought together to manœuvre in the same field, and hence had no opportunity of judging of each other's skill and fitness. If the recommendation were left to the officers of regiments, they would regularly, certainly and invariably nominate the oldest officer, according to date of commission, and then matters would be even worse than at present.

Mr. Morgan said, he had intended to have amended the sixth resolution: as it now stood, the Legislature were to appoint all the officers above a Colonel or commandant of a regiment. Before the revolutionary war, there were no Brigadier Generals, and only county lieutenants. The election of Brigadier Generals and Major Generals was a measure adopted during the revolution. Although there might be occasionally some hard cases, the present plan had operated well. None of the States, he trusted, had enjoyed a higher military fame. The amendment he wished, was to insert after the word "companies" in the sixth resolution, the words "battalions and regiments." Let the officers nominate, and nomination would be nearly the same thing as appointment. The oldest officers would invariably be nominated: because each man respects the age of his own commission. If both the amendment and the amendments to the amendment, should be rejected, and the alteration be made which he had suggested, he was persuaded the system would be found to work well: it had thus far.

Mr. Tazewell wished to know of the gentleman from Fauquier, (Mr. Macrae,) how he proposed to collect the sense of the nominating body? The State, at present, contained, he believed, four division districts; each containing a Major General and field officers of division. They must amount to some hundreds in all. They could not be collected into one spot without great inconvenience and expense, and without so collecting them, how was the will of the majority to be ascertained.

Mr. Macrae replied, that if this was the only objection to his plan, he anticipated its entire success. His great object was to have a military body for the nominating power: the details of his plan were to be left to the Legislature: as to brigades, there could be no great difficulty. The officers of one brigade might be brought together, without travelling more than thirty, or at most, more than fifty miles in the Eastern part of the State, and not exceeding seventy in the Western. The sense of the officers might be collected in their own counties. There would be, to be sure, more difficulty as to divisions; but it was not insurmountable, and the principle was very important. As to the objection that the officers of the same division were not acquainted with each other's military capacity, surely the difficulty was greater if extended, as now, to the whole State.

Mr. Johnson, without pretending to be well versed in military matters, suggested his objection to the plan of having officers nominated by those whom they were to command. He thought the gentleman from Fauquier, had not removed the objection of the gentleman from Norfolk. And though the details were to be left to the Legislature, yet if they presented impossibilities, they formed a valid objection against the plan. Suppose four divisions were to be put together, (for this was a matter for Congress to controul,) how could the sense of the officers be collected? The rule of seniority, too, would always be resorted to. Every military man adhered with invincible pertinacity to the principle of seniority. All were alike interested in maintaining it.

How the gentleman's plan might answer in the regular army, he could not say: but, he put it to the gentleman's good sense to say, how it could work among militia, where there was no military school and no opportunity for practice? The principle of seniority might soon raise a sergeant to the command of a regiment—and the commandant of a company to the rank of a General. He was opposed to the principle, nor could he think it wise to set the officers by the ears in the selection and nomination for filling vacancies, nor to set soldiers in the line to elect their own officers—they would always nominate the most lenient. He would never consent to set officers canvassing with their men for all the offices in the army. These might be the suggestions of ignorance, for he professed little knowledge of the subject; but they struck him as obvious common-sense objections to the plan proposed.

Mr. Brodnax gave notice, that if the present amendments should be rejected, he should move that all appointments, be in future made by law. He did not intend to enter on the discussion. It was very possible there might have been some abuses, but he believed that all militia Generals were not members of the Legislature. He advocated the reference to future legislation of the *mode* of appointing *all* officers, if any *part* of the subject was committed to them; that in the event of failure in any experiment, the *old* mode might be recurred to; for which he expressed a preference to that of elections by the military themselves. He was opposed like the gentleman from Augusta, to the idea of soldiers selecting their own officers—the effect would be, that instead of training their men, the officers would be treating them to whiskey and electioneering. They would meet, not to improve themselves in military exercises, but to eat barbecues and to drink whiskey: and he who could make the prettiest speeches, would stand the best chance to be elected.

In the case of companies, the County Courts recommend according to the nomination of the company: in that case, it was well known that military merit was the very last thing that was thought of. The question was about Adams men and Jackson men. And above all, whether the man had a liberal heart and a full purse, to buy more whiskey. But the whole scheme was idle. No man, he presumed, but a mere theorist, could ever expect an efficient militia system, in the piping times of peace. The best place for the display of such a system was on paper. As to the appointment of the officers by the Governor, with the advice of the Senate, the objections to it were insurmountable. He illustrated the effects of such a plan, by referring to the Government of Great Britain, where, though the King nominally made all the appointments, the ministry controlled them, and they were the subject of bargain and sale. He suggested difficulties as to the nomination by officers of very unequal grades. Were all to have equal votes? and if all these details could be arrayed, the effect would be endless heart-burnings. The influence of resentment and jealousy would be felt and unconsciously acted upon.

Mr. Powell was in favour of Mr. Macrae's proposition, so far as the appointment by the Governor was concerned; but he was for excluding the Senate from any participation.

Mr. Trezvant replied to Mr. Brodnax. If his plan were to carry, the time of the Assembly would be wasted in the appointment of regimental officers—Colonels, Majors and Captains. To this he should be wholly opposed. He was opposed to an *unrestricted* submission of the *mode* of appointment to the Legislature, of officers of *all* grades, for fear they might themselves undertake the appointment of inferior officers.

Mr. Macrae and Mr. Brodnax made a few remarks in reply, when the question was taken on Mr. Macrae's amendment, and negatived: Ayes 40, Noes 49.

(Mr. Madison and Mr. Marshall in the negative.)

Mr. Macrae then offered it in a modified shape, omitting the advice and consent of the Senate; but it was not more successful than before.

He modified it once more, so as to have the higher officers appointed by the Executive, by and with the consent of the Senate, and the rest by the Assembly.

But this was also negatived.

The question being then put on Mr. Trezvant's motion to strike out and insert,

Mr. Summers called for a division of the question: it was divided accordingly; and being first on striking out,

Mr. Mercer, in illustration of the effect of allowing officers to be elected by their inferiors, quoted the instance of a Pennsylvania regiment on the frontier during an interesting and critical period of the last war, whose soldiers being tried by their officers for *desertion*, were *finéd twelve and a half cents* a piece. If gentlemen were for giving to the militia of the State such an organization as would render it most efficient in war, there ought to be no officers at all appointed above the rank of Colonel. But this was not in the power of the Convention: it belonged to the General Government. He should vote for the striking out.

The question was then put on striking out the sixth and seventh resolutions of the Executive Committee and *carried*, without a count. And the question recurring on inserting Mr. Trezvant's amendment in lieu of them,

Mr. Doddridge said, that with a view to test the sense of the Committee, he should move that it now rise : he was not prepared to vote on this proposition, or any other connected with the Legislature, until it was first settled how the Legislature was to be constituted. He felt this difficulty touch him at every step, and in the hope that the Committee would to-morrow take up the question of the basis of Representation, he moved that the Committee do now rise.

The motion was negatived—Ayes 36.

Mr. Mercer said, if the proposition of Mr. Trezvant should be inserted, the inevitable result would be, that all militia officers would in fact be elected by the people.

The question being then put on inserting the proposition of Mr. Trezvant, it was carried—Ayes 45, Noes 41.

(Mr. Marshall, aye : Mr. Madison, no.)

So the Committee inserted in lieu of the sixth and seventh resolutions of the Executive Committee, the following :

Resolved, That the mode of appointing militia officers ought to be provided for by law : *Provided, nevertheless*, That no officer below the grade of a Brigadier General should be appointed by the General Assembly."

On motion of Mr. Powell, the Committee then rose.

And the House adjourned to meet in the Capitol to-morrow at 11 o'clock.

THURSDAY, DECEMBER 10, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

On motion of Mr. Summers, the report of the Committee charged with procuring a suitable house for the sittings of the Convention was taken up ; and after a conversation, in which Messrs. Summers, Powell and Claytor took part, Mr. Campbell of Brooke was added to the Committee, and they were directed to prepare accommodations for the Convention in the first Baptist Church ; and it was resolved that when the Convention adjourned, it would adjourn to meet in that place at 11 o'clock.

The Convention then went into Committee of the Whole, Mr. Gordon in the Chair, and resumed the consideration of the report of the Judicial Committee.

And the second resolution of that report having been read as follows :

Resolved, That the present Judges of the Court of Appeals, Judges of the General Court, and Chancellors remain in office until the expiration of the first session of the Legislature held under the new Constitution, and no longer. But the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities, and past services, shall be deemed reasonable."

Mr. Henderson moved to strike out this resolution. It was incompatible with the doctrine laid down in the seventh and eighth resolutions of the same Committee : the first of which provided for Judges being impeached and removed upon conviction, and the last required a vote of two-thirds of both Houses of the Legislature to exclude them from office. These two provisions covered the whole ground ; and why should such a measure as this be thought of ? It was at least wholly useless ; and if so, why should it be done ? It was unfeeling and unadvised. He trusted the House would strike it out. He was aware that discontent existed in relation to some of the Judges, and he had himself participated in it to a considerable extent : but he trusted that our Judges would be put on the same footing with other officers : not a justice of the peace, not a constable, could have a hair of his head touched without crime being proved against him : but here, at one sweep, all the Judges and the Chancellors were to lose their offices, and that without any fault being proved or even pretended against them. He trusted, if the Judges had done no wrong, and were capable of discharging their duties, that they would be left where every other officer under the Government was left.

Mr. Morgan having ascertained from the Chair that such a motion would be in order, moved to amend the resolution, by striking from it these words : " But the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities, and past services, shall be deemed reasonable." The clause was unnecessary—as the Legislature would have this power without it. The Convention would not assume that the Judges are old and infirm, or to presume that, of course, they would not be re-appointed. As to removing all the Judges from office, they might as well remove all members of Assembly, and all Executive officers under the Government : they have power to re-organize the whole system. He was in favour of retaining the first clause.

Mr. Morgan consented, for the present, to withdraw his motion, at the request of

Mr. Scott, who moved to amend the last clause, by striking out the word " may," and inserting the word " shall," so as to make it imperative on the Legislature to pay

a reasonable sum to such of them as were not re-appointed, and whose age and infirmities might require it.

Mr. Scott said, he was the mover of the resolution in the Judiciary Committee, but not in the shape which it now wears. He had thought, and did still think, that great inconvenience attended the system now in operation : and he was not singular in that opinion. He wished to put it in the power of the Legislature to remedy all the evils that grew out of it. While he thought that the Judges might be removed from office as the resolution proposed, he also thought it fair that they should receive some compensation. He considered Judges as standing in a very different relation to the people, from all other public servants : their offices had been accepted under a contract that they should retain them during good behaviour : and though they were appointed under the existing Constitution, and when it was abolished their office ceased with it, yet they had had no such evil in view when they accepted their appointments : and though the people had, in strictness, a legal right to remove them, yet moral justice required that this should not be done without some compensation being made to them. Unless the amendment should be adopted, he should vote against the resolution.

The question being taken, the amendment was rejected.

(Mr. Madison and Mr. Marshall voting in its favour.)

Mr. Morgan now renewed his motion to strike out the latter clause. He said, that Mr. Scott's whole argument had gone to prove either that the Judges should not be removed, or that they should be allowed their whole salary during life. But the Judiciary Committee had been of opinion, that the whole Judicial system ought to be re-organized, and the Judges preserved. No attack was intended by him on the independence of the *Judiciary*, by making the motion to strike out the words mentioned, nor did he think it could be so construed. It was expected that a new Judicial Department, as well as a new Legislative and Executive, was to be established; and it was as proper to remove all the present Judges, as to remove the officers of the other Departments. If, from any cause, some of them should not be re-appointed, certainly the Legislature ought not to be directed to make provision for them. That was a power which properly belonged to the Legislature and not to the Convention.

The question being taken on Mr. Morgan's motion, it was decided in the negative—Ayes 39, Noes 48.

(Mr. Madison and Mr. Marshall, No.)

So the Committee determined to retain the clause which allows (but does not require) the Legislature to compensate old and infirm Judges who lose their office by the adoption of the new Constitution, and are not re-appointed.

Mr. Doddridge moved to amend the resolution by striking out the word "held," and inserting the word "elected," so as to make it read, "Resolved, that the present Judges, &c. remain in office until the expiration of the first session of the Legislature *elected* under the new Constitution." The effect of which change would be, to defer the effect of the resolution upon the Judges for one session longer. By the law of the last session, it was made the duty of the Governor to convene the Assembly under the old Constitution, in order to put the new, if accepted, into operation. Now, it was usual to elect members to the Assembly in April: and the vote on the Constitution by the people, was to be taken on the same day and at the same place. The same inequality of representation which now exists in the Assembly, will continue till next Spring, and the new system of representation will not go into effect until the session after; and Mr. D. thought it not advisable that the new organization of the Judiciary should take effect till then. That object would be effected by his amendment.

The amendment was adopted.

The question now recurring on Mr. Henderson's motion to strike out the whole of the second resolution,

Mr. Powell opposed it, as going to place the Legislature in a most unpleasant situation, should the number of Judges be reduced, by compelling them to make a selection among the Judges. It was an invidious and painful task. He thought it far better to let all their offices expire together : nobody could seriously believe they would not be re-appointed, unless infirmity and disease rendered them incapable of service.

Mr. Nicholas was in favor of the motion to strike out. He saw no reason why Judges should be placed on a different footing from other officers. It was a mere subtlety to pretend they lost their offices by the adoption of the new Constitution. Why they more than other functionaries? Were all the officers of the Government to be displaced by the change? If the principle was true, why not carry it out? Why make the Judges alone, the object of a proscription? He had voted for Mr. Morgan's amendment, not because he should not be gratified to see some provision made for old and infirm Judges, who had lost their offices without a fault; but because he apprehended it to be the entering wedge of a system of *pensions*. He dwelt on the evils of such a system, particularly as felt in Great Britain, and deprecated its introduction here.

He bore honorable testimony to the present Judges, as men of probity and free from injustice and oppression— inveighed against proscribing the whole class because ob-

jections were entertained against a few of the number—and turning them adrift after they had abandoned every other occupation to serve the State, in an arduous and responsible station. If gentlemen wish to get rid of any of the Judges, there was a plain path provided—two-thirds of the Legislature could remove them at any time, according to the eighth resolution. As to what was said about the certainty that all good Judges would be re-appointed, he had not enough of the gift of prophecy to know that. He hoped the Convention would have more magnanimity, than to take away the offices of all those worthy men, because it was in their power to do so.

Mr. Coalter said, he had thought he was disqualified from voting on this question, being one of the persons implicated: but, he was told, this was not the case. He had voted on Mr. Morgan's motion, because he believed he did not come within the description in the clause, which that gentleman wished to strike out. The clause spoke of such "as from their age." Now he did not consider himself as yet superannuated—"Infirmities!"—he thanked God that this was not his case—he was not past service on that score—but was able to work as hard as any man in the service of the State—As to "past services," he should advance no claim on that score either. He concluded by expressing his wish to be excused from voting on the present occasion.

The question being now put on the motion to strike out, it was negatived—Ayes 29. (Mr. Marshall, Aye.)

So the second resolution was retained—[See it above.]

The Committee next proceeded to the third resolution, which is in the words following:

"*Resolved*, That the Judges of the Court of Appeals and Inferior Courts, except justices of the County Courts, and the aldermen or other magistrates of Corporation Courts, shall be elected by the concurrent vote of both Houses of the General Assembly, each House voting separately, and having a negative on the other; and the members thereof voting *viva voce*. The votes of the members shall be entered on the Journals of their respective Houses. Should the two Houses, in any case, fail to concur in the election of a Judge, during the session, the Governor shall decide the election, by appointing one of the two persons who first received a majority of votes in the Houses in which they were respectively voted for. But if any vacancy shall occur, during the recess of the General Assembly, the Governor, or other person performing the duty of Governor, may appoint a person to fill such vacancy, who shall continue in office until the end of the next succeeding session of the General Assembly."

Mr. Wilson moved to amend the resolution, by striking out the word "concurrent" and inserting "joint," so as to read "that Judges, &c. shall be elected by the joint vote of both Houses."

He stated his reason to be, that if there was any difference of opinion between the two Houses on a nomination, it was proper the House of Delegates should prevail, as being the direct representatives of the people annually elected, and the most numerous body.

Mr. Thompson of Amherst, had moved the resolution in the Judicial Committee, and now defended it against the proposed amendment.

He considered the question of appointment as one of great difficulty: though the act of appointment being neither an Executive, Legislative nor Judicial act, in strictness, the principle of the Bill of Rights, which related to keeping those departments separate, did not apply. The question was, what body was the safest depository for the appointing power? Certainly not the people; for they were not in a situation to perform the duty. In what body, then, was the trust to be reposed? There were objections to each. He had once thought it best to give it (after the example of some other States, and of the United States,) to the Governor and Senate; but he had heard strong objections to this plan, and recent events in the Federal Government had discouraged such an idea. Then, it must be given to the Legislative body. But jointly, or separately? If jointly, the House of Delegates becomes the appointing power, having a large majority of the votes. There were objections to this, *a priori*. The popular branch, without a check, and subject as it is to intrigues and cabals, and the influence of party spirit, and "log-rolling," seemed an improper depository for such a trust. Very bad appointments had been made; and a man who was on the floor would always have a great advantage over other candidates.

The resolution as it now stood, provided a check, by requiring the Senate to concur. And if a check in the Lower House was thought so necessary in matters of ordinary legislation, why not in cases of appointment? But, if they could not agree on the candidate nominated, another candidate was to be taken up, and the two bodies, concurrent, were substituted as a nominating power. This gave no patronage to the Executive, but made him merely an umpire: he could not go far wrong by taking either candidate.

Mr. Wilson replied, no objection had been observed in practice to the existing mode. The gentleman from Amherst had said, to make the election a joint one, was to give the appointing power to the House of Delegates. This would be true, if that

House was perfectly and always united; but the reverse was often the case. He had never heard of a single instance, where they were thus united. But, suppose each House to be united on their own candidate, and to disagree with each other. This was not an improbable case: and then the Governor would invariably have the appointment of the Judges, which was the very evil deprecated by the gentleman from Amherst himself.

Mr. Powell called for a division of the question on striking out and inserting, and it was divided accordingly: and being now on striking out,

Mr. Giles rose in favour of the motion to strike out. He was in favour of the present mode of joint election. It had long been practised; and so far from proving any evil, had been attended with the greatest good that could be looked for in the present state of human nature, which was frail at best. He differed entirely from the gentleman from Amherst, as to the House of Delegates being a theatre for intrigue, party spirit, "log-rolling," &c. His experience (though not great) had led him to a conclusion directly the reverse. There was, to be sure, much conversation and much comparing of opinions; but, this was all right and proper, and ought to accompany every election. He thought the simplicity and certainty of the present mode were great recommendations of it. He referred to the experience of Pennsylvania, where her influence on a turning question in the General Government, had on one occasion been endangered, if not lost, by the obstinate adherence of two branches of the Legislature to opposite candidates.

But, these reasons were subordinate and collateral. His great and controlling reason for wishing the resolution to remain unchanged, was, that it involved the great question of *intermediate elections*. He questioned the fitness of the people in their original capacity, to elect Judges and Militia Officers, or indeed any other functionaries, except their own Representatives in the State and General Governments. So long as they could perform that duty well, their rights and liberties were secure. It was not necessary they should go farther in their own persons.

But, this was not a mere question of fitness and expediency, such as that respecting the election of Militia Officers. There were many objections to the people's electing Judges. They were not able to judge of the legal qualifications which fitted a Judge for his office.

Mr. G. said, he was one who believed that the principle of intermediate elections must be eventually called in to save this country. The people, in our system of Government, were called on to elect so many officers of different kinds, that they must have agents to do for them that which they could not do for themselves: and what better agents could they have, than their own Representatives in the Legislature? What was the object of appointing these Representatives? That they might lay down rules of conduct for the community. This was the great security for liberty. But the people had power to say, that they would not take the task of appointing their ministerial officers, because they had not sufficient personal knowledge of the qualifications of individuals, but would lay this duty upon those who had the knowledge, and whom they had already entrusted with their dearest interests. Mr. G. here referred to the rapid increase of our country in population, and insisted on the necessity of knowledge to a suitable exercise of the right of election. This the people could get to the whole extent necessary for a proper selection of their Representatives, but not to fit them to select such officers as their Judges and Governors. The moment you place them to act in a matter beyond their sphere, they must of necessity depend for knowledge on somebody else; and that moment they were thrown into the hands of electioneers—regular thorough-going electioneers: and of all the baneful spirits which could infest the community, the spirit of electioneering was the very worst.

Mr. G. then went into a detailed description of the manner in which elections were conducted in the House of Delegates; and contended, that what was called "log-rolling," was in most cases but a free interchange of opinions, with a view to enlightened and united action. He insisted, that instead of throwing all elections into the hands of the people, and all the patronage of the Government into the hands of the Governor, let the election be fairly conducted by the Legislature, and their responsibility to the people would be enhanced and not diminished.

By keeping the resolution in its present form, Mr. G. thought he was selecting electors to make appointments in his behalf.

As to the greater numbers of the House of Delegates, the two Houses were amalgamated into one body for the purpose of the election—they acted as individuals, not as chambers. The amendment would cause them to vote as two chambers, and if they disagreed, the power would be wielded by the umpire between them.

The question being taken on striking out the word "concurrent," it was carried.

[Mr. Madison and Mr. Marshall, No.]

The question being then on inserting the word "joint,"

Mr. Mercer wished to defer it until the number and constitution of the Senate should be settled.

Mr. Mason thought, after the last vote, that the necessity of the whole resolution was done away with. After some farther conversation between Messrs. Mercer, Mason and Coalter, the question was taken, and decided in the affirmative.

So the Committee inserted the word "joint," deciding that the election of Judges shall be by a *joint* vote of both Houses of the Legislature.

On motion of Mr. Wilson, the following part of the resolution was then stricken out:

"Each House voting separately, and having a negative on the other; and the members thereof voting *viva voce*. The votes of the members shall be entered on the Journals of their respective Houses. Should the two Houses in any case fail to concur in the election of a Judge during the session, the Governor shall decide the election, by appointing one of the two persons who first received a majority of votes in the Houses in which they were respectively voted for."

The Committee now proceeded to consider the fourth resolution, which is in these words:

"*Resolved*, That the Judges of the Court of Appeals, and of the Inferior Courts, shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office."

On motion of Mr. Fitzhugh, it was amended, by inserting after the words "Inferior Courts," these words: "Except justices of the County Courts, and the aldermen, or other magistrates of Corporation Courts."

The Committee next took up the fifth resolution, which reads as follows:

"*Resolved*, That on the creation of any new county, justices of the peace shall be appointed in the first instance, as may be prescribed by law. When vacancies shall occur in any county, or it shall for any cause be deemed necessary to increase their number, appointments shall be made by the Governor, by and with the advice and consent of the Senate, on the recommendation of their respective County Courts."

Mr. Campbell of Brooke moved his substitute for the fifth resolution, prescribing the mode of appointing the magistrates of County Courts.

After some conversation between Messrs. Campbell and Leigh, the substitute was rejected—Ayes 19.

The question recurring on the original resolution,

Mr. Claytor moved to amend it, by striking out all the latter clause, viz: "appointments shall be made," &c. (to the end,) with a view to submit an amendment, giving the filling of vacancies to the Legislature. He was unable, from indisposition, to go into a discussion of his reasons.

Mr. Fitzhugh should vote for striking out, but reserved himself as to filling the vacancy.

After some conversation between him and Mr. Leigh,

The question was taken on striking out, and rejected—Ayes 44, Noes 48.

[Mr. Madison and Mr. Marshall, No.]

Mr. Marshall said, that the fate of the motion just made, shewed it to be very decidedly the sense of the Committee, that vacancies in the number of justices were to be filled by the Executive, on the recommendation of the County Courts; but this mode of appointment could be preserved in its purity and perfection, only by requiring the Executive in nominating, and the Senate in deciding on his nomination, to act on all the recommendations of a County Court, taken as a whole. If this were not required, the Governor might select one, or two, or more of the names recommended, get these persons appointed and commissioned, and thus very materially change the character of the court which made the recommendations, and effect the same thing as by the original power of appointment, without any recommendation by the County Court. By requiring him to take the whole, if any, you retain, said Mr. M., those magistrates which the Court wished to see appointed, and thus give full effect to their nomination.

If the Executive needs, as is conceded, to be instructed as to who are proper candidates to be nominated, and who not, from whom is he to ask that instruction, rather than from the County Court magistrates themselves? They are dispersed through the county: they know when vacancies occur; and they know better than any one else who are fit persons to fill them. To whom shall the Governor appeal rather than to them? If the nomination is to be made by the Executive, all must agree there is no source of information so valuable to him, or which can furnish such correct and certain intelligence.

Suppose it left in the choice of the Executive to leave out some of the persons recommended to him, and to retain others, how is he to learn whom to admit and whom to refuse? All gentlemen feel that it is impossible the Governor, personally, should possess such knowledge of men in the various counties throughout the Commonwealth, and such an acquaintance with all the individuals they may recommend, so as to be able to select such as are the most fit from among them. He must receive information from others, either privately or publicly communicated to him; and none

can make a communication which the Executive can more rely upon than on theirs. It is possible that some individual whom they have recommended, may be unworthy : he may have been guilty of some offence, even after being recommended. In that case, let the whole recommendation be returned to be revised and corrected, and let the court strike out such names as they please. The courts themselves can alone know how to select proper individuals, unless indeed the election of magistrates is to be made by the people ; but that is a point not presented by the present proposition. The question now is, on the recommendation by the courts, and the action of the Executive upon that recommendation. Let him be required to act upon the whole recommendation, and either nominate all or none of the individuals it contains.

It may be said, that if the Governor recommends the whole, the subject may then be left to the discretion of the Senate, and they may advise the appointment of some and not of others of those nominated. What will be the effect ? The Senate will derive the information on which it acts, from that member of its own body, who comes from the district in which the appointments are to be made : and will you rather submit the question to him to decide, than to the County Courts ? If the Senate reject some of the persons nominated, they must do so on some information, probably that of one of their own members : but all know how many various influences may operate on that member, which do not upon the County Courts. He has his supporters and his opponents, his friends and his enemies ; but, this can have no influence on the justices of the County Court. They have no motive to action which is calculated to lead them to make improper recommendations.

I therefore move you, Sir, to amend the resolution as follows :

“ But the whole number recommended at any one time, shall be commissioned or rejected.”

Mr. Leigh suggested some inconveniences that would attend the plan proposed by the Chief Justice, where counties were distant from the seat of Government. So much time would be occupied in correspondence, that if a recommendation was returned, before the County Court could have time to act upon the case, and make a new recommendation, the Senate would have adjourned. He suggested the very unpleasant effects that would be occasioned, if the reasons were to be assigned why the rejection of the recommendation had been made—the destruction of character, heart-burnings, &c. This was not the case at present ; because when one was rejected, it might be supposed to have been done, lest the bench should become more numerous than the wants of the county rendered necessary, and the same candidate was always recommended again. Thus character was spared. So invariably was this the case, that an individual, when passed over in a recommendation for the shrievalty, was heard by counsel before the Executive Council.

Mr. Campbell said, the remarks of both the gentlemen had only convinced him, that neither Governor nor Council ought to be troubled in the case at all. Let the County Court who now recommend, have power also to appoint : for there it ended at last.

Mr. Giles went into a statement of the manner in which the matter was conducted at present, from which it appeared that though the Governor was held to have a perfect right to reject any one or more of those recommended to him, from delicacy it had never been done during his term of office. Scrutiny into individual character was rare, though it was sometimes made. He declared on the whole, his purpose to vote in favour of Mr. Marshall's proposition. He could not avoid again going into a general commendation of the existing County Court system, as throwing power into the hands of the middle class of the community.

Mr. Marshall having for a moment withdrawn his former amendment, after a few prefatory remarks, moved to amend the resolution by striking out the words “ by and with the consent of the Senate.” Which was agreed to.

Mr. Macrae moved as a substitute the following :

“ *Provided, however,* That if any person be recommended to fill any such vacancy, or new appointment, and shall be disapproved by the Governor, such person shall not be again recommended to fill the same vacancy, or new appointment.”

He said, it was with great diffidence that he ventured upon any question, and more especially, upon one relating to our Judicial system, to differ from the venerable gentleman from Richmond ; but great and virtuous men in this body had differed upon almost every proposition presented for our consideration ; and each individual (though humble as he himself was) must rely upon his own judgment, and could find no guide in authority. He was disposed rather to enlarge, than fetter the veto of the Executive upon the recommendation of the County Courts for appointments to the magistracy. The present mode had been regarded by many as anti-republican in theory ; and in some instances, it had been mischievous in practice : and he was disposed to apply a constitutional corrective, if one could be devised likely to be adequate to its end. In matters of Government, he did not profess to be much influenced by mere theory : he should seek the discovery of the principles that would work well ; and he would

apply, as well as deduce them in reference to their practical consequences. He feared that the various schemes of appointment offered in place of that provided by the existing Constitution, would induce more evil than they would remedy. The present mode, he believed, had, in general, filled the magistracy with the best men in every county; and had, at least, procured as good men as would probably have been selected in any other mode. It had, therefore, in the main answered its purpose; and he was disposed to retain it; but he would subject it to such modification as would in his judgment correct its irregular action. The County Courts had been called a self-elective magistracy; but they were not: they were a self-nominating body; and the Executive made the appointments, and exercised a negative upon the recommendation of the courts. He referred to the opinion expressed by Mr. Jefferson; and he believed instances had occurred of favouritism from family influence, and party feelings. If a family, or a faction should attempt to perpetuate, or strengthen itself on the bench of a county, in what manner could it be frustrated but by the due exercise of the veto of the Executive? And how could that veto be made effectual, if, after the rejection of a recommendation by the Executive, the court could renew it? It had been said that the Executive might be misled, and be disposed to recal its disapproval: but this objection might be obviated by providing, that the rejected nomination might be renewed with the assent of the Executive. It had been said, too, that the amendment would operate a total disqualification of the persons recommended and rejected; but this was a mistake; it only prevented a renewal of the *same* nomination to fill the *same* vacancy, and a perpetual see-saw between the Executive and the court. The gentleman from Richmond had insisted, that the Executive was not as competent to make a due selection of justices, as the courts of the counties where they reside; but he answered that the Executive must be presumed to be as competent to exercise its veto, as the courts were to prefer their nominations: each acted in a mode, and upon information, appropriate to the particular functions delegated to them. The Executive was competent, or it was not: if competent, it ought to have power to make its veto effectual to the end for which it was given; and, if not, the veto should be taken away from it, and the recommendations of the courts should be without controul. He did not pretend that his amendment would be effectual in all cases; but he believed it would have a salutary tendency to prevent, or check the evils it was designed to remedy.

Mr. Marshall opposed the amendment, as going to disqualify forever, a man, against whom any objection was once made.

The Governor might send back a recommendation, simply because it contained too many persons: yet, according to Mr. Macrae's proposition, they were all to be disqualified, and among them, perhaps the fittest man in the county.

Mr. Macrae said in reply, that the extent of his amendment has been misunderstood: it only referred to the *same vacancy* for which the individual had been recommended, and not to any other. He mentioned the dissatisfaction among the people, in respect to these courts, and the desirableness of removing it. As to the objection, so far as it did apply, it could be obviated by a slight alteration of the resolution. He thought the measure calculated to lead to a different practice in the County Courts, and prevent the present *see-saw* between them and the Executive.

The question being taken on Mr. Macrae's amendment, it was rejected.

Being taken on that of Mr. Marshall, it was also rejected.

(Mr. Madison and Mr. Marshall, aye.)

Mr. Macrae now offered another amendment, referring, for his justification, to the earnest interest of a portion of his constituents, in this matter. It was as follows:

"Justices of the peace shall be commissioned during good behaviour, but may be removed in the manner which shall be prescribed by law, for misbehaviour in office, crime, neglect of duty, removal from the respective counties, or insolvency."

He said, that as to the first provision, all must agree: the fountains of justice ought not to be polluted by crime. It had been said, indeed, that this case had been provided for by law: but he thought it would be found, upon examination, that the justices of the peace were only removable for misbehaviour in office, and not for offences unconnected with their public duty. He would not say, that a man without property, would not give a fair decision on questions, where property was concerned; he would not say that a man who did not pay his own debts, was in all cases, an improper depository of the power of compelling other people to pay theirs; but he would say, that a very general impression prevailed, and it appeared to him, not without reason, that such a condition was extremely unfavourable to the impartial and firm administration of justice, between debtor and creditor. This branch of our polity, was one very peculiar in its constitution; and it had been found necessary to enforce the performance of its multifarious functions, by subjecting its administrators to a pecuniary responsibility, in many important cases. Deprivation of this office was no punishment; for it was an office of labour and expense to the incumbent, and was without emolument: and hence, the law has considered it necessary to enforce its regular ad-

ministration, by the imposition of fines—a security, and an important one too, which totally fails, in relation to insolvents. They are required to aid in important Executive functions; and if they are guilty of neglect, they are subject to pecuniary penalties. They are entrusted with the administration or disposition of important funds, both public and private, in respect to which, the best pledge of their fidelity, and that relied on by law, is their pecuniary responsibility. They are required to take adequate security from executors and other fiduciaries of estates; and, if they fail to do so, they are made liable out of their own property. What will this safe-guard avail, if the bench be occupied by insolvent justices, as is sometimes the case? And may not this defect of responsibility, lead to iniquitous combinations to defraud orphans? Mischiefs of this sort have happened; and although, happily, they have been few in number, owing to the general respectability and responsibility of the County Court magistrates, it had been better to have prevented even those few. The County Courts are invested with a sort of Legislative character; and in that character they impose, and appropriate the county taxes. This duty is assigned to them by law. It has been often objected to it, that it was performed by men who were not elected by and responsible to the people; and the answer has been, that a very sufficient security was afforded in the fact, that the justices participated in the burthens which they imposed. But what security is there in a bench of insolvents? And, if only a part be insolvent, as is the fact, I believe, in every county, is not the security proportionably diminished? Do we not sometimes see that part only occupying the bench to the injury of public justice, and the great offence of the people? And ought we not to endeavour to secure to all our institutions, and more especially to our courts of justice, the confidence, and affections of the people, which are so essential to their beneficent operation? Actual evils have resulted from this defect. I have heard upon good authority, of one instance, in which, an insolvent court appointed an insolvent sheriff, and took from him insolvent sureties; and the report is that the infamous combination divided among them the spoils of their fraud. These remarks, Sir, are intended to be general, and not to apply to any particular county, or any particular individuals. The district which I in part represent, has no peculiar cause of complaint on this subject; although a portion of my constituents think the evil of sufficient magnitude to call for redress. I know, too, insolvents who have my most perfect confidence: but there are others who have not; and as the people have no choice, can make no discrimination, we must adopt a general rule which will exclude all.

Mr. Doddridge said, that all the cases in the amendment were provided for already, except that of insolvency.

Mr. Macrae replied, that justices held their offices during good behaviour, and that was held to refer to their official conduct alone.

Mr. Joynes moved to strike out the word “insolvency.” Which was carried.

Mr. Claytor moved to amend, by adding the words, “or incapacity for the discharge of the duties of their office.”

The amendment was negatived.

The question being then taken on Mr. Macrae's amendment, it was rejected.

(Mr. Madison, aye: Mr. Marshall, no.)

The Committee then took up the remaining resolutions of the Judicial Committee, which were passed without amendment, and are as follow:

“Resolved, That the Clerks of the several courts shall be appointed by their respective courts, and their tenure of office be prescribed by law.

“Resolved, That the Judges of the Court of Appeals and of the Inferior Courts, offending against the State, either by mal-administration, corruption, or neglect of duty, or by any other high crime or misdemeanor, shall be impeachable by the House of Delegates, such impeachment to be prosecuted before the Senate. If found guilty by a majority of two-thirds of the whole Senate, such persons shall be removed from office. And any Judge so impeached, shall be suspended from exercising the functions of his office until his acquittal, or until the impeachment shall be discontinued or withdrawn.

“Resolved, That Judges may be removed from office by a vote of the General Assembly; but two-thirds of the whole number of each House must concur in such vote, and the cause of removal shall be entered on the journals of each. The Judge against whom the Legislature is about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon.”

On motion of Mr. Campbell (of Brooke,) the Committee then rose, and the House adjourned.

FRIDAY, DECEMBER 11, 1829.

The Convention met in the First Baptist Church at 11 o'clock, and its sitting was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

Mr. Campbell, from the Committee appointed to procure a House for the sittings of the Convention, made a report in part.

On motion of Mr. Summers, the Convention proceeded to the appointment of an additional door-keeper, rendered necessary by its present situation: and Mr. George R. Myers was appointed without opposition.

The Convention then went into Committee of the Whole, Mr. Gordon in the Chair: and the report of the Judicial Committee being still under consideration,

Mr. P. P. Barbour moved to amend the first resolution of the report, by striking therefrom the following words: "no modification or abolition of any court shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any judicial duties which the Legislature shall assign him."

Mr. Barbour said, he had no idea of detaining the Committee with any argument at large on the subject of the amendment, being fully sensible that the condition of the Committee and the value of every hour of its time alike forbade it: he should state concisely two or three of the reasons which had led him to offer the amendment and add a few remarks on the general subject. He was aware that the question was necessarily involved in some difficulty. He took it for granted, the object intended by the clause he had moved to strike out was, to guard against any evils happening in Virginia, which had occurred elsewhere, and which attended the *possibility* that the Legislature, when it should find itself unable, either by impeachment or by a vote of two-thirds of the members of both Houses to get rid of an obnoxious or unpopular Judge, might attempt to effect the object by abolishing the office which he held; and the arguments in favour of the provision, had reference to a memorable case which happened about twenty years since, the circumstances of which he should not stop to retrace: but would proceed to remark upon the apprehended difficulties.

It was certainly true, that there was a *possibility* that the Legislature of Virginia might pursue such a course: he believed it to be true that a course of conduct very like it, had been adopted in Maryland and in Kentucky, and that there was considerable excitement in the public mind upon the subject. But, if the mere possibility of abuse was to be relied on as an argument in its naked, unmodified, unqualified shape, then no power at all could be conferred by the Constitution; for, all power in human hands, was liable to abuse. But, if it was only said that this principle ought to govern in the distribution of power, viz: not to give it where there was a strong and reasonable probability of its abuse, if the abuse was only possible and the advantages to be derived from conferring it were great enough to compensate for running the risk, then it ought to be conferred. As to Kentucky, he spoke doubtfully and not from full knowledge, but he believed that after a period of great but temporary excitement, the sound sense of the reflecting part of the community had eventually prevailed. In Virginia, however, without claiming any peculiar exemption from evil as peculiar to her citizens over others, he had supposed that there was a sedateness of character and a fixedness of habit, a sense of propriety—a moral sense—a regard to reputation, and a consciousness of responsibility to the people, which would prevent such an abuse from ever taking place. Let me endeavor to shew the Committee what will be the result of retaining the clause in question. It declares that "no modification or abolition of any court shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any judicial duties which the Legislature shall assign him." Suppose that in the progress of our history and experience, it shall be found that certain courts at present recognized by our judicial system are in effect useless, or worse: but that on a re-organization of the system it should be found that there remained more Judges than could be beneficially employed, this provision, if left to stand in the Constitution, will prevent the Legislature from ridding the state of the existing evil. Let me illustrate this for one moment. Let me suppose, (I do not say it is my opinion that the Legislature ought, but they might, and it is supposable that they might consider it correct, and might wish to do such a thing,) let me suppose in reference to the Supreme Court or Court of Appeals, that instead of enjoining the Judges to go through the State, performing *Nisi Prius* circuits and having the causes adjudged *in banc* at the seat of Government, it should choose to confine its sessions to this plan, and should thereby dispense with the services of a part of the Judges: or let me suppose that they should undertake, as has been much talked of lately, to unite Chancery and Common Law jurisdiction: all the Chancellors would at once become unnecessary. I could imagine other cases, but I will not detain the Committee. I quoted these merely to illustrate the position that we ought not, out of fear that the Legislature may do wrong, so tie up their hands as to prevent them from doing right. If the Legislature in its wisdom, should find that there are more Judges than can be usefully occupied, and wishing to remedy the case,

this provision puts it out of their power. None I presume can intend, that any individual shall receive the emoluments of an office, which does not exist. If we could bring ourselves to suppose that the Legislature out of mere wantonness, would vacate a Judge by the abolition of his office, it would no doubt be a great evil: but would it not be a greater to say that they shall not abolish the office effectually, because the Judge must still remain in office? I submit to gentlemen whether this would not be the greater evil of the two.

I believe that no practical danger like that suggested is at all to be apprehended: I believe that the responsibility of the Representative and his regard to reputation, that the character of the people of Virginia and its Legislation, authorise me to say that such a thing is not possible. Surely we ought not, from apprehension of any such danger, to encounter a great and positive evil.

It has been suggested, however, that the end may be attained by what is provided in the eighth resolution. That resolution reads, "*Resolved*, That Judges may be removed from office by a vote of the General Assembly: but two-thirds of the whole number of each House must concur in such vote, and the cause of removal shall be entered on the Journals of each. The Judge against whom the Legislature is about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon." It must be obvious to the Committee, from an eye glance, that this contemplates the removal of a Judge from an office which exists, and which will continue after his exclusion, and not to the case where the office itself will have ceased, when he no longer occupied it. It speaks of the Judge being "*removed from office*:" this undoubtedly contemplates that his removal will create a vacancy in an office still to continue: but cannot properly apply to the supposed case of the abolition of the office itself.

This idea is confirmed by consulting the context. "The Judge against whom the Legislature is about to proceed shall receive notice thereof, accompanied with a copy of the causes alleged for his removal;" causes personal to him, and relating to some offence he is alleged to have committed—but the office still continues ready, to be filled by others, if he shall be excluded from it, but which if he succeeds in repelling the charge, he will continue himself to fill. The two clauses are to be considered together. The one says the Judge may be removed, the other says that this may not be done by the abolition of his office. The amount would be, that the Judge shall not cease to be a Judge—and yet, what? that you may remove him from office because you wish to get rid of him. But the Judge is called upon with notice of the causes alleged for his removal, not that he may argue with the Legislative body about the continuance of his office: no; but to repel the charges brought against him. And I say that no Legislature on earth with these two clauses before them, would feel authorised to dispose of a Judge by the abolition of his office, when the other clause says that by its abolition he shall not be removed for being a Judge.

I will now add two or three remarks, and then resume my seat.

I am well aware the question is a difficult one. The independence of the Judiciary—I mean its just and reasonable independence—is what I will never break in upon: but I will not consent to make the office of a Judge continue against the will of the Legislature and of the people. The Legislature will never attempt to abolish the office of a Judge, unless they shall deliberately believe it to be for the public good: and then they ought to have the power to do it. There is a *possibility*, I grant, that they might abolish it for the sake of getting rid of three letters of the alphabet, and immediately reinstate it for the sake of putting into it three other letters in their room: such a thing is possible: but I will not impute such a purpose to the Legislature of my native State, and from the dread of such a deed, tie up their hands from abolishing an office which they have found to be useless and injurious.

Mr. Venable said he was in favor of the resolution as it stood, and against the motion to strike out. I have considered this subject, said Mr. V., and looked at the evils on both sides: and I am disposed to take that which I think the best. If the Assembly should wish to get rid of some Judge or Judges, they may not, to be sure, be as infirm as the Legislatures of some of our neighbors; but if they should, it will bring a great stain upon our character: and the moment they shall recover from the temporary heat and excitement under which they did the act, they must themselves become convinced that they have done very wrong. On the other hand, suppose the change or abolition of a particular court should leave a few Judges to spare, what will be the mighty mischief? They will only have to go into some one of the other courts during the remaining period of their life; and when they die, there will be an end of the difficulty.

They will always be valuable elsewhere, if not in the court where they were at first appointed—and where is the great difficulty? But I should consider it, and my friend from Orange acknowledges that it would be, a great evil indeed, if the Assembly of Virginia should be tempted to abolish a court for the sake of getting rid of a

Judge. This was the view of the subject which was taken in the Judicial Committee, and I feel confident that the clause ought to be retained.

Mr. Stanard expressed his surprise that his acute and sagacious friend from Orange (Mr. Barbour,) had totally misconceived the terms and scope of the clause he wished to strike out, and had supposed that the terms of the eighth resolution could in no possible contingency be found a remedy to the case where a *bona fide* honest abolition of one court was desired, and the substitution of another differently organized in its room. Let us look to his general reasoning. He thinks proper to indulge in the pleasing anticipation that so much morality and integrity exists now, and will forever hereafter continue to exist in the Legislature, that he cannot expect it as probable, nay, not as possible, or barely so, that a spirit will be dominant in that body, that will lead to the expedient of repealing a law organizing a particular court, and then to re-enact it for the sake of getting rid of some obnoxious Judge. And he thinks this, in the face of the experience, the very recent experience, of two of our neighboring States, besides other examples which might be quoted, in total oblivion of what passes under his eyes, and what we all know daily to happen, viz: that when the passions are highly excited, no means that the Constitution allows will remain unemployed to gratify those passions. What was the course pursued in Kentucky? Under the influence of passion, a majority of the Legislature became embodied against certain Judges of that State: but their Constitution imposed a clog upon their movements, (just such as this eighth resolution of ours proposes to do;) it required two-thirds of both Houses to put the Judges out of office. After an impassioned struggle, they failed to obtain the requisite number; and frustrated in their plans of vengeance, the majority resorted to the exercise of a power which their Constitution did not forbid, and forthwith passed a law discarding the whole court, and turning every Judge out of his office; and then immediately re-instated the court with new Judges. Sir, will this never be attempted here? Will not some inflamed majority, unable under the eighth resolution, to accomplish their object, attempt to do, what the amendment of the gentleman almost invites them to do? I know not why we are to be free from the passions which sway other men.

The provisions of the clause proposed to be stricken out, are the more necessary, in consequence of that in the eighth resolution. And has the gentleman who professes (and I doubt not sincerely feels) such friendship for an independent Judiciary, looked to the influence which his measure will give to the Legislature over the Judicial body? So far as it operates, its tendency is to mould the Judge to the Legislative will. It certainly lays him under the strongest temptation not to go in contrariety to that will. Here Mr. S. put the case of an unconstitutional law having been passed, and the trying situation of the Judiciary, if liable to have their office legislated from under them. But for this provision, every modification of a Court may incorporate the repeal of the commissions of its Judges, and put every Judge out of office by a stroke of the pen. The Legislature cannot provide for the continuance of a Judge in office, by mere act of law. If the law constituting the court is repealed, the Judges will go with it: and this possibility would hang over every Judge in all the Courts of Virginia, from the Court of Appeals down to the County Courts. Besides, clauses may be introduced without observation, and by dextrous management be retained till they pass with the rest of the law, and thus turn the Judges out of their office. From the very nature of the case, as soon as the Legislative and Judicial Departments come into conflict with each other, the power of the Legislature will be put into operation to remove those who are obnoxious to their displeasure: and this in the face of the vain, and (as it will then become) the ridiculous limitation contained in the eighth resolution. Let us be consistent at least. Let us say that a majority of the Legislature may at any time remove every Judge of all the intermediate Courts, and not put them upon scandalous expedients to attain by indirection what they may as well be allowed to attain openly and without disguise.

But the gentleman from Orange labours under a total misconception of the terms of the eighth resolution. He supposes, that it does not furnish the means of getting rid of useless Judges, where the Legislature, *bona fide*, and without any enmity against the Judge, abolishes the Court, and re-organizes, in order to improve it. He supposed that resolution only gives the Legislature power to remove a Judge from an office which continues; and if the Court is abolished, he then supposes that this cannot be done. He asks, how can a man be removed from an office, if the office itself is destroyed? But the clause in the first resolution, which he proposes to strike out, prevents the abolition of the office, the abolition of the Court notwithstanding. You may have abolished the Court, yet that clause says he is still a Judge. He may have lost his jurisdiction, but he is a Judge still, and retains his Judicial office. Can there be any better cause for the amotion of a Judge, than that the Legislature has ascertained, that the court to which he belonged is of no value? that it shall be abolished, and its jurisdiction exercised by some other court, or shall cease to be exercised at all? and this *bona fide*. I say, could there be a better cause for the amotion of a Judge, than

this? For such a case, the eighth resolution furnishes an ample remedy; but it is provided, under this salutary check, that the Legislature is inhibited, under the mere colour of abolishing the court, to do so with the unhallowed purpose of depriving the Judge of his office. If you give the Legislature this power, they may disband the whole of the Judges at pleasure.

But the gentleman tells us there are dangers in the way. Does he expect, as the country goes on increasing in its population, and the extent of its settlements, that our Judicial establishment is to be diminished? Can he look forward to a time, when a less quantum of Judicial power is likely to be needed? But admit it. Where is the danger? What are the mischiefs which are to grow out of this paragraph? The only conceivable one is, that in the changes induced by a new organization of the courts, a Judge or two may become supernumerary. Not to insist on what I said concerning the constant progress of society, the eighth resolution provides a remedy even in that case. These supernumeraries, if they become so numerous as to prove a burden, may be removed. But no day is more remote or improbable. In the mean while, the preceding part of the first resolution leaves the courts to the entire power of the Legislature, as to their organization and jurisdiction—these they may re-model at their pleasure.

I ask the Committee to weigh the opposite mischiefs—on the one hand, leaving the Legislature in the possession of power to disband all the Judges they dislike, and attack and destroy the independence of the Judiciary. This to be counted against the possibility, and that a remote one, of the existence of one or more supernumerary Judges. They are as dust in the balance.

Mr. Morris, with a view to remedy the difficulty apprehended by Mr. Barbour, although not of opinion that such a clause was absolutely needed, but under the persuasion that it might remove doubt, and produce no evil, moved the following proviso to be added at the end of the eighth resolution:

“ Provided, however, That if upon the modification or abolition of any court, any Judge or Judges should not be directed to perform other Judicial duties, it shall be competent to the General Assembly, two-thirds of the whole number of each House concurring therein, to vacate the commission or commissions of such Judge or Judges.”

Mr. Barbour thought the amendment, though it obviated what he had urged in relation to the eighth resolution, did not remove the difficulty as to retaining Judges whose duties had ceased, unless they could be removed by a vote of two-thirds of both Houses. He would not consent to frame the organic law on the hypothesis, that the Legislature were to do wilful and deliberate wrong. He judged them by his own conscience, and could not believe they ever would.

Mr. Marshall said, he did not intend to enter into the debate at this time. Had the gentleman from Orange been content with the amendment, he should have said nothing; but as he had not seemed satisfied with it, he could not help suggesting to the gentleman from Hanover, (Mr. Morris,) whether it was proper to press the amendment. There was not the slightest possible necessity for it as an explanation of the resolution: with great respect, said Mr. M., for the opinion of the gentleman from Orange. if I can understand his language, he both misquoted and misunderstood the eighth resolution, when he supposed it to require the construction he puts upon it. He has used throughout his argument the word *office* instead of *Court*, and it was that which produced the confusion into which he has fallen, and which alone leads to the slightest supposable difficulty. He says that the eighth resolution does not apply to the case provided against in the clause he would strike out, because it uses the term *office*, and he says the Legislature cannot remove a man from an office, which office does not exist—that no abolition of the office can be construed as a removal of the Judge—and that a Judge cannot be removed from an office that he does not hold, because the office has been abolished.

Now, the language of the clause in the first resolution, speaks of the abolition of a *Court*, not of an *office*: but the abolition of a Court is not the abolition of the office of the Judge. The office of a Judge is his capacity to administer justice: not to administer it in one Court only. The former Judges of the General Court have been advanced to another Court since: yet the Judge remains, though he was appointed a Judge of the General Court. There is no necessity, whatever, for the proposition of the gentleman from Hanover. It is impossible the resolutions should be misunderstood so far as that the application of the eighth resolution, to the case provided for by the second, cannot be seen—but if it was possible so far to misunderstand it, the language might be slightly changed. But it is obvious from the two taken together, that change the Courts as you please, the Judge remains in office and is ready to receive any duty which the Legislature may assign to him. I suggest to the gentleman the propriety of withdrawing his proviso.

Mr. Barbour said, that the gentleman from Richmond had, (not intentionally he was very sure) done him injustice, when he charged him with misquoting. He read from the printed pamphlet in his hand. The argument he had intended to urge was this; that

though the Court should be abolished and the office remain, still he questioned whether the removal of a useless Judge was within the scope of the eighth resolution. He would submit another reason for this opinion. By that resolution it was provided, that the Judge was to be served with a copy of the causes alleged against him.

Now, supposing the Legislature has abolished the Court and wishes to remove one of the Judges. What "are the causes" to be shewn in this case? Are they to say to the Judge, we want your services no longer, and you must come and dispute before us, whether your office ought or ought not to be continued? To my mind the eighth resolution imports the idea, not that the Legislature wish to remove the Judge, but that against A. or B. some imputation has been brought, and that he is to be summoned to answer the charges.

Mr. Marshall rose in reply. I still say the gentleman has totally misrepresented the meaning of the resolution. He still says that it speaks of charges alleged *against him*, and asks if the abolition of the office is any charge *against* the Judge. No, it is not. I did not say it was. But I say, and I say it with great confidence, that as the terms of the resolution are expressed, it does not require that any cause shall be alleged against the Judge: whatever may operate as a cause for his removal comes within the resolution: it may be assigned as such by the Legislature, and it does not imply that he has committed any offence. We must not confound the clause providing for the impeachment of a Judge with the clause providing for his removal from office: for crimes and offences, he is to be impeached, and the impeachment is to be tried before the Senate. But when the Legislature shall say that he is useless, and that there is cause for his removal, he may be removed. The resolution requires the cause to be assigned and recorded. The Legislature may say, as that cause, that the Judge is useless; that the number of Judges is too great, and that part of them may be dispensed with: and then the resolution applies entirely. It may be a question with the Legislature, whether he has not been rendered useless by themselves in the abolition of his Court; but that is a question for them only, and for nobody else. If they choose to designate it as the cause of his removal, they can act upon it.

Mr. Morris said, it gave him at all times great pleasure to comply with any request of the gentleman from Richmond, and the more now as he had at first been of the same opinion as that gentleman; but he had offered the proviso with the hope of satisfying his friend from Orange; and the gentleman from Richmond had said, he would be content it should be inserted: it was true, the gentleman from Orange was not wholly satisfied, yet owned that it removed his objection to the eighth resolution—he, therefore, must still insist upon his motion.

Mr. Doddridge said, he was against both the proviso and the amendment of the gentleman from Orange, and for a different reason from any that had been assigned. He had yesterday voted against striking out the second resolution—but he wished to substitute a proviso, which he would indicate. The great difficulty of giving the Legislature power to re-organize the Courts, grew out of the tenure of the Judges, and from even a seeming attack upon their independence. It was easy to empower the Legislature to reduce the number of the Judges in commission, according to a plan which he would submit when they got into the House. Some years since, Mr. D. said, a desire was felt to reduce the number of the Judges of the Court of Appeals from five to three, and others wished that their salaries might be increased. And it was proposed that on the first vacancy's occurring it should be left unfilled, and so when the second should occur; and when their number should be reduced to three, the salaries of all the five should be divided among them. The proposal met with minds enough to carry it; but experience had proved that it worked badly; in consequence of which the number was restored to five, but the increased salary was continued. Now, Mr. D. thought that a plan of this kind might be adopted to get rid of supernumerary Judges, should any be occasioned by the re-organization of the Judiciary system: let them have employment while they lived, and when they died leave their places unsupplied.

The question was now taken on Mr. Morris's amendment, and negatived: and the question recurring on that of Mr. Barbour,

Mr. Johnson rose in opposition to the amendment. He was opposed to striking out the clause in question, and equally to the object which seemed to be in view by doing so. He did not wish to put it in the power of the Legislature, at pleasure, to remove every Judge from office, whenever they should persuade themselves that some good effect was to follow from it; yet such would be the certain effect of the motion of the gentleman from Orange. He did not know whether he had correctly understood the gentleman from Spotsylvania, who said that the clause only applied to Judges of the Superior Courts. Such was not his interpretation. Its language was universal: "No modification or abolition of *any* Court shall be construed," &c. But, if the Committee should agree to the first resolution in its present form, what would be the foundation of the Court of Appeals? Would it be beyond the power of the Legislature to modify and even abolish that Court? They could not, to be sure, say

there shall not be any Court of Appeals, but they might abolish any particular Courts of Appeals, change it entirely, and give the new court power to issue appeals. Suppose the Legislature should say, that the Court of Appeals should be abolished, and that the General Court shall be a Court of Appeals in all civil, as it now is in all criminal cases. Does the resolution restrain them from doing this? It does not: and if it is adopted, there is no protection whatever to the Court of Appeals as it is now organized—none whatever. Now, he held that the clause, which the gentleman sought to strike out, covered with its mantle the Judges of that Court, as well as of all the rest. The moment it was stricken out, they would have all the Judges at the mercy of the Legislature. Would any gentleman be willing so to subject the Judicial to the Legislative branch of the Government? Did any man, who valued the independence of the Judiciary, as the very best feature in our free institutions, wish to put every Judge in the land entirely at the discretion of the Legislature? Yet would not that be the practical effect of the amendment? The gentleman from Orange, he was very sure, did not desire such an effect. The gentleman, looking only to his own heart, and his own independent impartiality and exemption from the bias of party feeling, could not indulge the idea, that the Legislature of his State would be governed by any but the purest motives of wisdom and patriotism. If this were indeed so, then he would agree at once to put all the destinies of the Commonwealth unservedly into their hands. He asked for no courts—no Judges. He would commit all the powers of the Government at once to the Legislature. But was that the course of human affairs? Did the experience of the world authorise such a doctrine? Did not the gentleman see how readily a Legislative body, influenced even by the purest wishes for the public good, might be brought to the conclusion, that duty to their country required that every Judge in the country should surrender his commission? In the moment of party excitement, a Judge would be considered as but a small sacrifice, when some favourite measure was to be carried. How little would his fate or his prospects weigh against some immediate imaginary good to be obtained by his removal? Was the gentleman willing to put the Judges upon the virtue and good intentions of the Legislature, for the security of their offices? Would he cast them upon its wisdom as their safeguard? It was an idle belief. They never would be insensible to the effect of popular clamour and discontent, nor to the excitement of party politics in high party times. There was besides, a feeling engendered by the mere conflict of opinion between an independent Judiciary, who sought to restrain their excess, and an ardent body pressing for a favourite scheme, which could not but expose the former to danger. What was the object of creating an independent Judiciary? Was it merely to secure the salaries of a few men? Far from it. That did not even enter into the question. It was to enable the poor and despised man to come on equal terms into controversy with the rich and the powerful. It was to enable the unpopular man to appeal with confidence to the tribunal of his country, against the popular idol of the day. It was to enable the humblest citizen in the community to stand firm and erect before the Commonwealth itself. In a political point of view, it was to enable the Judicial branch of the Government to prescribe limitations to Legislative power itself. But, could it answer these noblest and best of ends, if its functionaries, before they pronounced a decision, were to look at its effect upon their own subsistence, and the comforts of all whom they loved? Compel a Judge to look at this, and he could soon find ways and means of justifying any decision which his interest or his safety might require. It took but little trouble to muster up law enough to effect such an end. The late Judge Pendleton used to say, that when a cause had been examined by him, the first question he asked himself was, which decision does justice require? And then he set about to find law to sustain that decision. Set a Judge to enquire what does policy demand, and he was a driveller if he could not find law for it. None ought to drive, or wish to drive any Judge to consult such unworthy motives. How then, would the Judge stand, supposing the clause to be stricken out, as proposed by the gentleman from Orange? If an unconstitutional law had been passed by a bare majority, he would consider himself as safe against a vote of two-thirds of the House; but, if the law was known to be very popular, he would have reason to fear. How then, was the power of the Legislature to be exercised against him?

Mr. J. said he would never give his vote for the provision, which went to remove Judges by a vote of two-thirds of both branches of the Legislature, without any crime having been proved against them. If they were to be removed for bodily or for mental inability, he had no objections; but, he would never consent to give the Legislature a *carte blanche* to put any Judge they please out of office, if they could muster a majority of two-thirds of their number against him. The Judge might further be supposed to ask himself, if they fail to get two-thirds, is there no other way in which they can get at me? How do I hold my office? I am not a Judge of a Court, which the Legislature yesterday organized, and which they may to-morrow modify, reorganize or abolish. If I hold my office by the continuation of the court as at present organized, the Legislature may say, this man by his decision has defeated one of

our most favourite objects of policy. The Governor, I perceive, takes part with them. He says to them, you made a most wise and excellent law: I entirely approve of it, and I tried my best to put it into execution; but, that unjust and oppressive tribunal has refused to sanction it. Can I suppose that a hint from head quarters, that the court is not wisely and judiciously organized, will not be sufficient? Does any gentleman here, asked Mr. J., believe that the Judge would reason unwisely? Does any man believe that the Legislature, under such circumstances, would stop for one hour? No. They would re-organize the court, and thus get rid of the Judge. I have no doubt, said Mr. J. that among the schemes of reform, and we shall have plenty of them, the Judicial office will become to be no more respected by the Legislature than the law of their predecessors. Will you give them this power? And do you believe that two or three, or ten, or twenty Judges will stand in their way? Not in the least.

Mr. J. observed, that any Judicial duty that could be performed with ten Judges, might be as well performed by twenty. Supernumeraries in that respect, would not be serious impediments. As to the expense, that was already incurred: they must pay them, simply because they had them. Besides, the objection on the ground of economy diminished with every life that fell. And will you, asked he, encounter so serious a danger, on the paltry consideration of the salaries of some half dozen Judges during their remnant of life? Will gentlemen look at the plans of reform, and tell me which of them contemplates the least diminution in the number of our Judges? All that I have heard of, contemplate an increase. The objections, then, rest on the basis of a bare naked *possibility*.

Mr. Tazewell now moved to amend the amendment of Mr. Barbour, by striking out the words "a Court of Appeals," and inserting in lieu thereof the words "one Supreme Court." In advocating the amendment, Mr. T. observed, that this at first view might appear to be a mere verbal criticism. He should not stop to enquire if it were so or not, but would go on to observe, that by so altering the phraseology, it would be made to conform in terms to that used in the Constitution of the United States, and then they should have the benefit of the settled interpretation put upon that phrase, which would answer the great argument of the gentleman from Augusta, (Mr. Johnson.) Then they would have the one Supreme Court of the State, a Constitutional Court, and the Inferior Courts Legislative ones: and as according to the settled construction of the Constitution of the United States, Congress had power to re-model or abolish the Inferior Courts of the Union, so the Legislature of Virginia would have power over the Inferior Courts of Virginia. Then the question as to the operation of the clause proposed by his friend from Orange to be stricken out, would be confined exclusively to courts of the latter description; and it was a very singular proposition, that while the Constitution gave authority to the Legislature to modify that portion of the Judicial power, which shall be vested in the Inferior Courts, according to its discretion, or to abolish those courts absolutely and without any condition, it was yet proposed, that the Judges of those courts after the abolition of them, shall be preserved. He had not understood one remark which had been made on the word "office." He took it to be settled under the words "that Judges may be removed from office;" that the Legislature had power to abolish and modify Inferior Courts. What then became of the office? If it remains, said Mr. T., of what sort is it? Under the Constitution, or under the law? If under the Constitution, then, when the Judge dies the office remains, and there must be a successor appointed, and it remains a sinecure. If under the law, when you repeal the law you repeal the office. I do not then understand how the office remains. I always apprehended, that the Judge's office pertained to his court, and could not continue after it. There will be a strange anomaly existing in Virginia, which exists no where else, nor can. The Legislature has power to create, modify and abolish an office, and yet the incumbent of the office is to be saved, though the office may cease. What is the reason of this? The office of a Clerk and a Marshal is held during good behaviour. Why must not they too retain their office, unless there is something peculiar in the character of a Judge? Does an independent Judiciary require that the Inferior Courts should be independent of the Legislature? Was ever such a thing heard of upon earth? It is true, there must be an independent department, but there is no need of but one such department. The Inferior Courts must be subjected to the Legislature. Preserve your Supreme Court independent, and you get all you need. All your provisions are vain. What does it all amount to? You abolish the court, but do not abolish the office. Your Judge is still preserved *in posse*—not *in esse*—a Judge without jurisdiction—an officer without a place—and why?—for what? That he may get his salary. But where is he to get it? It must be paid him by the Legislature. But, if you are to presume *mala fides* in the Legislature, the salary of the Judge being under their controul, they may withhold it at pleasure; and how are you to help yourselves? It will always be so—it is in the nature of the case, and you cannot change or remedy it.

If the amendment shall obtain, that the Constitution of Virginia will read as the Federal Constitution does now: you will have one Supreme Court, with its Judges holding their offices during good behaviour, beyond the controul of the Legislature,

just as the Judges of the Supreme Court of the United States, are beyond the reach of Congressional power, while your Inferior Courts, like those of the Union, will be subject to Legislative controul, and may be modified or abolished at will.

This is not a speculation: it accommodates the Constitution of Virginia to the terms of the Constitution of the Union, which has received a fixed interpretation, and concerning whose meaning doubt is removed by a long train of recorded decisions. By accommodating ours to that, no difficulty will arise; it will get aid of the argument of the gentleman from Augusta—and when it is disposed of, I am prepared to vote for the amendment offered by my friend from Orange.

Mr. Campbell of Brooke said, that he should vote for the amendment of the gentleman from Norfolk, (Mr. Tazewell,) for two reasons: first, for the sake of the argument he had given to the Committee, and by which he had satisfactorily proved that the Commonwealth ought to have but one Constitutional Court; and next for the sake of the amendment itself. Mr. C. said he had prepared one of the same tenor, but doubting his own judgment, had forbore to offer it. He had always thought there ought to be but one Constitutional Court, and that it ought to have two kinds of jurisdiction, appellate and original. It was now called a Court of Appeals, and its jurisdiction of course was appellate only, but if it were denominated a Supreme Court, it might be endowed with original jurisdiction also.

Mr. Nicholas wished to explain the grounds of his vote. He agreed in part with the gentleman from Norfolk, and should vote for his amendment, but was not in favour of striking out the clause referred to by the gentleman from Orange.

He had had a doubt whether the Court of Appeals was not on the footing of an ordinary Legislative Court; and that doubt had been confirmed by the late debate on the subject of the County Courts. Here Mr. N. recapitulated what had passed in respect to retaining the word “the” before County Courts, and contended that it was equally necessary before the words “Court of Appeals,” should that title be retained. He was, however, in favour of giving it the title of a Supreme Court; then, if Inferior Courts should be provided when the court was abolished, the office went with it. He agreed perfectly in that opinion. Here Mr. N. adverted to the well known controversy as to the Judges of the District Court retaining their offices. That was a dispute about interpreting a Constitution already in being; but now a Constitution was to be formed, and they might put in it such provisions as they pleased; and so they might declare that the Judge should survive the abolition of his court. He was in favour of such a provision. He professed himself an ardent friend to the independence of the Judiciary; yet he would have held the Judges amenable to law and not above law, if the continuance of their office be essential to their independence. But if the public good required the abolition of their courts, gentlemen asked if he would be for continuing the Judges in office, without any employment? He answered no: and contended that that case was provided for in the eighth resolution, by which they might be removed whenever the public good required; but as a safeguard against caprice, two-thirds of both Houses were required to effect it.

Mr. Leigh was opposed to the amendment of Mr. Tazewell. The only effect of it would be, that the court might then receive original jurisdiction. He perceived no expediency in this: He contended that, in order to understand the report of the Judicial Committee, it was necessary to take the whole together. He compared the first and second resolutions with the eighth, and concluded from the whole, that the jurisdiction of all the tribunals of the State was left to the law; there the term of the Judge’s office was fixed—and there provision was made against a manœuvre to get him out of office by destroying and re-instating his court. The meaning of a Judge’s office was his civil capacity as a Judge to receive new Judicial duties. This was to remain, however the courts might be re-modelled or even abolished: then came the test; if the Legislature wished to get rid of a Judge, there was a check upon their proceedings by requiring two-thirds of both Houses to concur.

Mr. Leigh referred to a case in the history of the courts of Virginia, when this principle of a Judge surviving the change of his court was acted on. Before the Federal Constitution had been adopted, there had been in Virginia a General Court with five Judges, a Chancery Court with three Chancellors, and an Admiralty Court with three Judges. The latter was superseded by the powers of the Federal Government. The Legislature left one Chancellor; and then gave ten Judges to the General Court. The effect of the struggle, was to compel the Judges of the Court of Appeals, to perform *nisi prius* duty as Judges of Assize. He then went into a history of the creation of the District Courts, and the transfer of the Judges. He contended, that in the present case, if any chancery jurisdiction was to be abolished, the Chancellors could be transferred to the General Court; and if it should prove too numerous, the extra Judges could be gotten rid of by the plan suggested by Mr. Doddridge. The difficulty would be of short duration.

MR. MARSHALL now rose and addressed the Committee in nearly the following terms:

The gentleman from Chesterfield, has understood the language of these resolutions correctly. No doubt was entertained in the Judicial Committee, that the whole subject of the jurisdiction of the courts and the change of their form should be submitted entirely to the Legislature. There was no question on the subject. When I first heard the amendment of the gentleman from Norfolk, I had no objection to it except that this Court of Appeals had been long known to the Constitution of Virginia, and ought to be retained, unless there was some utility in the change. As to the consideration that there had been a regular and fixed construction of the Constitution of the United States for a great length of time, that was no reason to change the title of Court of Appeals, because the Constitution of Virginia had been in existence for a still longer time. But though my original objection to the change had been only that it was unnecessary, when I heard the gentleman's argument I felt more.

I shall not enter on the question, whether the construction of the Federal Constitution by the Congress of the United States is correct, or whether it will be adhered to or not. That question I shall not touch—it is not before the Committee. We act on the presumption, that that construction might be adopted, and we have provided against it. The argument of the gentleman goes to prove not only that there is no such thing as Judicial independence, but that there ought not to be no such thing: that it is unwise and improvident to make the tenure of the Judge's office to continue during good behaviour. That is the effect of his argument. His argument goes to prove, not only that there is no such thing, but that it is unwise that there should be. I have grown old in the opinion, that there is nothing more dear to Virginia, or ought to be dearer to her statesmen, and that the best interests of our country are secured by it. Advert, Sir, to the duties of a Judge. He has to pass between the Government and the man whom that Government is prosecuting: between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the exercise of these duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depends on that fairness? The Judicial Department comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or controul him but God and his conscience? You do not allow a man to perform the duties of a jurymen or a Judge, if he has one dollar of interest in the matter to be decided: and will you allow a Judge to give a decision when his office may depend upon it? when his decision may offend a powerful and influential man? Your salaries do not allow any of your Judges to lay up for his old age: the longer he remains in office, the more dependant he becomes upon his office. He wishes to retain it; if he did not wish to retain it, he would not have accepted it. And will you make me believe that if the manner of his decision may affect the tenure of that office, the man himself will not be affected by that consideration? But suppose he is not affected by it: if the mere repeal of a law, and the making some change in the organization of his court, is to remove him, that these circumstances will not recur perpetually? I acknowledge that, in my judgment, the whole good which may grow out of this Convention, be it what it may, will never compensate for the evil of changing the tenure of the Judicial office.

The gentleman from Orange placed his argument upon this ground, that to impose such a restraint upon the Legislature, was to make an imputation upon the Legislature, which he would not make. He did not suppose it possible they would act in that manner, and he would not provide against it. For what do you make a Constitution? If your confidence is complete, and no provision is necessary against misdoing, and no imputation is to be cast upon the Legislature, why are we making another Constitution? Consider how far this argument extends. In the tenth resolution of the Legislative Committee, you say that no bill of attainder, or *ex post facto* law, shall be passed. What a calumny is here upon the Legislature of the gentleman's native State! Do you believe, that the Legislature will pass a bill of attainder, or an *ex post facto* law? Do you believe, that they will pass a law impairing the obligation of contracts? If not, why provide against it? Does not the principle of the gentleman from Orange apply as much to this case as to the other? You declare, that the Legislature shall not take private property for the public use, without just compensation. Do you believe, that the Legislature will put forth their grasp upon private property, without compensation? Certainly I do not. There is as little reason to believe they will do such an act as this, as there is to believe, that a Legislature will offend against a Judge who has given a decision against some favourite opinion and favourite measure of theirs, or against a popular individual who has almost led the Legislature by his talents and influence. I am persuaded there is at least as much danger that they will lay hold on such an individual, as that they will condemn a man to death for doing that which, when he committed it, was no crime. The gentleman says, it is impossible the Legislature should ever think of doing such a thing. Why

then expunge the prohibition? He replies, the benefit to be obtained is this, that it is possible the Legislature may create Judges whom they afterwards discover to be useless: they discern their error, but if this clause is retained, they cannot retrace the step, and abolish their own work. Is this probable? In the history of this country, Judges are known to be charged with duties they are scarcely equal to. There are no surplus Judges. The office does not descend to the family, and multiply with it. All the Judges are created by a Legislative act: and they may as well abolish a court to get rid of a Judge, as create a court to make a Judge. There can be no just fear that unnecessary Judges will be created. It is not the tendency of our situation and our Government. The danger that they will be left dependent, is more probable: but if it does arise, it is provided against by the eighth resolution.

I see no utility in the amendment of the gentleman from Norfolk. It will change the established appellation of the court, long settled in our own Constitution. Be this, however, as it may, nothing can be, in my apprehension, more mischievous than to expunge that clause with the views that gentleman entertains. His design is professedly and avowedly to leave all the Judges but the Judges of the Court of Appeals, (and them too, as I believe will be the fact,) to the power of the Legislature. There is this difference: The removal of a Judge is an unpleasant task—it usually occasions some reluctance: but, merely to take away the foundation on which he stands, and to let him drop, is another thing: this occasions very little compunction, and as little to re-elect others, and leave him unprovided for.

I feel strongly, that this Convention can do nothing that would entail a more serious evil upon Virginia, than to destroy the tenure by which her Judges hold their offices.

Mr. Tazewell rose in reply:

The gentleman from Chesterfield, said he, urges as an objection, that the jurisdiction of the Court of Appeals is merely appellate, and gives this as a reason why he will vote to change the name of the court. Has the gentleman adverted to the fourth line of the resolution, which declares, that “the jurisdiction of these tribunals shall be regulated by law?” If the Legislature is to regulate the jurisdiction of all the courts, and this among the rest, what becomes of the ground he has taken, that the present jurisdiction of this court is appellate only? It is called “The Court of Appeals,” and *ex vi termini* it must be appellate; but, its jurisdiction may be altered by law in any way the Legislature shall direct. I do not know that it is so desirable, that its jurisdiction shall be appellate *only*. The distinction between original and appellate jurisdiction, is not perfectly clear. It runs into *apices juris*. I know of no argument to show, that we ought to exclude all jurisdiction, other than appellate. I think there are many cases, where it ought to be original also. I therefore apprehend there is no force in the objection of the gentleman from Chesterfield.

The gentleman from Richmond tells us, that he is unwilling to adopt the change of denomination proposed by my amendment. First, because it may cause the Constitution of Virginia to read *totidem verbis*, as the Constitution of the United States does; and the Constitution of Virginia is older in its date than the Federal Constitution, and is more certain in its interpretation. It will be seen by a repetition of the words, that the terms of the Federal Constitution are not repeated—they are changed; but, if they were identically the same, what interpretation has been put on this Constitution, which should induce us to prefer it? What did the Constitution do? Appoint Judges of the Court of Appeals? No. Judges of other Courts were made Judges of the Court of Appeals until 1788, when the District Court system was adopted. When that system was adopted, the Legislature thought there must be a Court of Appeals, and they then erected a District Court with that name, and so it has remained ever since. So far the Constitution of Virginia has had no settled decision which bears upon the subject. The Court of Appeals was composed of the Judges of three other Courts, and a subsequent Legislature pronounced it to be a Constitutional Court. But no such difficulty has ever occurred respecting the Constitution of the United States. I am told there may be different constructions of that Constitution. I care not how many different constructions may be put upon it *hereafter*. If the Convention adopt its language now, it adopts it as *now* construed: and after that, I do not care if they shall change the construction fifty times. I am for adopting the words as they are *now* understood: and it was for that reason that I moved the amendment. I would take the words “a Supreme Court,” under the construction held by every Department of the Federal Government—that the “Supreme Court” is a Constitutional Court, and its Judges beyond the reach of Congress itself. If we adopt the term under this construction, we adopt the construction itself; and thus the Court of Appeals becomes consecrated as much as the Supreme Court of the United States. And with respect to the Inferior Courts, change but one word, and your Constitution will be precisely the same, on this subject, as the Constitution of the United States. The construction always was, that Congress may change and abolish them at pleasure; and the construction has been acquiesced in to the present

time. By adopting the same words with the Federal Constitution as to both the Superior and Inferior Courts, all difficulty will be avoided for all time to come. This was my sole reason for wishing to have the amendment adopted.

But, it seems that, because of this, I am supposed to be opposed to the independence of the Judiciary. Sir, if I know myself, there is no member of this Convention more sincerely attached to that independence than I am. But I have no idea of making the Judiciary independent of the law. I want a constitutional tribunal which the Legislature cannot abolish; and you get that, when you get a Supreme Court. When it is said that every judgment of your Judicial Department shall, if required, be passed under the revision of this tribunal, you have got all that ought to be desired. If you go beyond this rule, where are you to stop? If every officer of every court is not to be declared constitutional, at what point are you to stop? Create a forum which shall be as distinct and independent a department of your Government as the Legislature or the Executive. You then have your three great departments, and that is enough. The Inferior Courts must be subject to the Legislative controul. It must be so. It always has been so in every country in the world but Virginia. Then I wish to know, whether it is desirable that the Judges should remain free from this controul? The gentleman is for allowing the Legislature to act on the tribunal itself; but he wants to secure the preservation of the Judge. What Judge? the Judge of what court? When you say that he retains the capacity to receive another judicial office, it is saying nothing: because he would have that capacity just as much if he was no Judge at all. It is only to declare that the Judge shall continue to *receive his salary*. But for what? for nothing. If this is necessary to secure the independence of the Judiciary, why, in the name of Heaven, let it be so. You can't buy that independence too dear. But you have that, when you said there shall be a Supreme Court. The Constitution of the United States says the same thing, and it has worked well: the independence of the Federal Judiciary has not been impaired. As to the duty which a Judge is called to perform, it certainly ought to influence the Legislature. It always has. The gentleman from Chesterfield is mistaken, when he says, that the Constitution of the United States, sinks the boat under the Judge. Three Judges became useless; but at that precise period, the old system of assize was got up in 1780, and brought in, in 1788: and then the Legislature appointed the three Judges of the Court of Admiralty, to be Judges of the General Court. They were so commissioned, that they might be made Judges of the Court of Appeals. There was no obligation on the Legislature to elect these particular persons: but they were selected, because they had been Judges: this was the overruling motive, which prevailed in their election. I never can agree to introduce into any Constitution, a principle, which virtually declares, that a sinecure shall be created, to support a man, without employment, because he has been a Judge. I never will or can agree to create a band of judicial pensioners, call them what you will. He who performs a duty, should be paid for performing it; and he should not be paid, unless he does perform it. I never will consent to depart from this rule, be the consequences what they may.

But, how is the independence of the Judiciary affected, by declaring that the Judge, whose court has been abolished, shall still retain his office? It is said, that he "shall perform *any* Judicial duties, which the Legislature shall assign him." What now becomes of his independence? You may not sink the boat from under him, but you may pile up jurisdiction to any extent you please, till you sink the Judge, boat and all. Here is a Judge who resides, say in Accomac: (one of these Judges *in posse*, not *in esse*), and you require him to hold a court in Lee, or Monongalia, two, three, or four times a year. Is not this striking at his independence, as much as if you took away his office? You say he shall keep the office; but, then, you may lay upon him any amount of duty you choose. You have only to suppose *mala fides*, in your Legislature, (and the provisions in your resolution go to the hypothesis of *mala fides* and profess to guard against it,) and your Judge is just as much at its mercy, as he would have been in the other case. You have only to suppose your Legislature wicked, and they can destroy any Judge they please.

As to the last clause, moved to be stricken out, by my friend from Orange, (Mr. Barbour,) I would abandon my opinions respecting it, if I could be satisfied, that when I have got a Supreme Court, I have not got an independent Judiciary; but I know that I have it, for I have seen it in the Federal Constitution for forty years; I want no more, and no better.

Mr. Marshall rejoined:

I trust the great importance of this subject, will be deemed a sufficient apology for my again troubling the Committee. Some observations have fallen from the gentleman from Norfolk, which I feel it incumbent upon me to notice. The gentleman has said, that it is sufficient for the independence of the Judiciary Department, that the Judges of the Supreme Court be independent: and that there is no country on earth, where the independence of the Judges of the other courts is secured. I will refer

him to the country with which I am best acquainted—I mean Great Britain. What is the Supreme Court of Great Britain? It is the House of Lords. And are not the Judges of the Court of Common Pleas independent? Do they not hold their office during good behaviour? Yet these are Inferior Courts. I do not know so well the condition of other countries in this respect; but, I believe the independence of the courts is preserved in France.

The independence of all those who try causes between man and man, and between a man and his Government, can be maintained only by the tenure of their office. Is not their independence preserved under the present system? None can doubt it. Such an idea was never heard of in Virginia, as to remove a Judge from office. You may impose upon him any duty you please. You may say, that the Court of Appeals shall sit every day, from the first of January to the last of December. The Judge of a County Court may be called on to perform his duty on the bench for a whole year. Yet he holds his office during good behaviour.

The Legislature can have no motive to impose unreasonable duties on a Judge—he may be required to do all he can do, and he can do no more. If the Judges in commission are incompetent to the duty which is to be performed, the Legislature will create more Judges: it is within the ordinary province of Legislative action. Their independence is not impaired by their being required to do all they can. This is their acknowledged duty.

We have heard about sinecures and Judicial pensioners. Sir, the weight of such terms is well known here. To avoid creating a sinecure, you take away a man's duties, when he wishes them to remain—you take away the duty of one man, and give it to another: and this is a sinecure. What is this in substance but saying, that there is no such thing as Judicial independence? You may take a Judge's duties away, and then discard him. What is this but saying, that there is, and can be, and ought to be, no such thing as Judicial independence? The gentleman says, he is a great friend to an independent Judiciary, and his friendship extends to the Supreme Court only. The whole circuit duty is now in the Inferior Courts: would he be very willing to transfer it to the Court of Appeals? It is impossible for him to answer but in the negative. He would then have the whole criminal jurisdiction of the State, entrusted to Judges, removable from office by the Legislature at its pleasure. What would then be the condition of the court, should the Legislature prosecute a man, with an earnest wish to convict him? But more. The great mass of controversy existing in the Commonwealth, must always be decided in the Inferior Courts. We had an example in the Old General Court. What would be the consequence of giving original jurisdiction to an Appellate Court? Such a mass of causes accumulated in that court, that the great grand-son of no man then living, would have seen the trial of the last cause on the docket. This will be the inevitable consequence: business will accumulate to an extent, that it will be impossible to pass through. The Inferior Courts will, therefore, try the great mass of causes, and reserve an appeal on questions of law. The gentleman would leave all these Judges unprotected by the Constitution. He declares himself a friend to Judicial independence, and gives independence to those only, who have no criminal jurisdiction. I understand by Judicial independence, the independence of all the members of the Judicial Department, whatever be their situation. He asks, are you to make every petty officer independent? I answer, no: but, is that the question? Are your Judges to be likened to every petty officer? Would he liken the Judges to them?

Will the gentleman recollect, that in order to secure the administration of justice, Judges of capacity, and of legal knowledge are indispensable? And how is he to get them? How are such men to be drawn off from a lucrative practice? Will any gentleman of the profession, whose practice will secure him a comfortable independence, leave that practice, and come to take an office, which may be taken from him the next day? You may invite them, but they will not come. You may elect them, but they will not accept the appointment. You don't give salaries that will draw respectable men, unless by the certainty of permanence connected with them. But, if they may be removed at pleasure, will any lawyer of distinction come upon your bench? No, Sir. I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary. Will you draw down this curse upon Virginia? Our ancestors thought so: we thought so till very lately; and I trust the vote of this day will shew that we think so still.

The question was taken on the amendment of Mr. Tazewell, and decided in the negative.—Ayes 29, Noes 56.

(Mr. Madison, *no*.)

The question now recurring on the amendment of Mr. Barbour, Mr. Stanard moved to amend, by inserting the word "Supreme" before Court of Appeals. Which was agreed to.

The question was then taken on Mr. Barbour's amendment, and decided in the negative.—Ayes 36, Noes 53.

(Mr. Madison, *no*.)

So the Committee resolved to retain the following clause:

"No modification or abolition of any court, shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any Judicial duties which the Legislature may assign him."

The printing of the various amendments, which had been agreed upon in Committee of the Whole, having been ordered, the Committee rose, and the House immediately adjourned.

SATURDAY, DECEMBER 12, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Lee of the Episcopal Church.

Mr. Mercer said it was with unfeigned regret, which he was sure would be shared by the Convention, that he rose to announce the resignation of his venerable friend and colleague, (Mr. Monroe,) as President of this body. His present indisposition rendered him unable to discharge the duties of that situation, and he felt it his duty to his constituents to tender his resignation.

Mr. M. presented to the President *pro tem*. (Mr. P. P. Barbour,) the following letter:

SIR—My indisposition rendering it impossible for me to perform my duties, either as presiding officer, or as a member of the Convention, I owe it to that body, to my constituents, and to the Commonwealth, to resign my seat, to enable my colleagues to devolve on some other person the duties that I am prevented from performing.

I avail myself of the opportunity to express my grateful sense of the generous confidence of my constituents, evinced by their election of me to the important trust, and of their support of me in the course that my conscientious convictions have induced me to take in the execution of that trust, though it differed in some degree with the sentiments they had entertained.

For the distinction with which I have been honored by the Convention, by its election of me to preside over its deliberations, I have already offered my grateful acknowledgments, and I beg again to tender them, and to add, that as a testimony of approbation of my conduct in the many important trusts I have held, under the State and Federal Governments, at home and abroad, it will continue to be a source of consolation to me to the latest moment of my life.

In separating myself from the Convention, I cannot refrain from the expression of my ardent and anxious hopes, that the result of its deliberations may correspond with the expectations so fondly cherished before its session commenced; and that a Constitution will be framed that will secure the rights and protect the interests of all, command the public approbation, and promote the happiness and prosperity of the State.

I beg you to tender to the members of the Convention individually, my most respectful salutations, and to be assured of the high esteem with which I am, your most obedient servant,

JAMES MONROE.

TO PHILIP P. BARBOUR, Esq. }
President of the Convention. }

This letter, on motion of Mr. Mercer, was laid upon the table.

Mr. Tazewell then observed that the resignation of the late President of the Convention rendered it necessary that another should be elected; and he made that motion.

Mr. P. P. Barbour having relinquished the Chair to Mr. Fitzhugh,

Mr. Gordon nominated Philip P. Barbour, as a suitable person to be appointed President of this body.

No other candidate being nominated, it was determined to dispense with the formality of a ballot, and the question being put, the nomination of Mr. Barbour was unanimously concurred in, and he was appointed President of the Convention.

Mr. Mercer then moved the following resolution:

"Resolved, That the Convention entertain a high sense of the patriotic zeal and ability manifested by their fellow-citizen, James Monroe, in the various public relations in which he has acted; and sympathise with him in the dispensation which has deprived them of his services as President of this body."

The resolution was unanimously agreed to, and so entered on the Journal.

The House then went into Committee of the Whole, Mr. Gordon in the Chair, and on motion of Mr. Taylor of Chesterfield, proceeded to consider the report of the Committee on the Bill of Rights.

The report, together with the Bill of Rights itself, having been read, the resolutions were considered *seriatim*.

The first resolution is in the following words:

Resolved, As the opinion of this Committee, that the Constitution of this State ought to be so amended as to provide a mode in which future amendments shall be made therein."

Mr. Johnson observing, that after much reflection, he had come to the conclusion that it was better to leave the amending power in the hands of the creating power, with a view to test the sense of the Committee, moved to strike out the word "Resolved."

Mr. Doddridge, speaking for the county in which he dwelt, and with the sentiments of which he was well acquainted, said that very great disappointment would be experienced there, if the new Constitution should contain no provision for its being amended as the changing and progressive state of society should demand. He was aware of the extreme delicacy of the subject, but thought it his duty to introduce some provision of amendment.

Mr. Nicholas thought it was better to let the resolution be passed over for the present, until they should see whether any new Constitution could be agreed upon.

Mr. Powell agreed in this view, and opposed the motion to strike out.

After some further conversation, at the suggestion of Mr. Mercer, Mr. Johnson consented to withdraw his motion.

The second resolution was then read as follows:

Resolved, That the first and second sections of the present Constitution ought to be stricken out, and that an introductory clause adapted to the amended Constitution, be substituted in lieu thereof."

Mr. Leigh suggested that the propriety of adopting this resolution, must depend on the fact whether an entirely new Constitution was to be submitted, as a whole, to the people, or whether the existing Constitution was to be submitted with amendments. In the latter case, there could be no need of striking out the preamble; in the former, it would have an odd and incongruous appearance.

The preamble of the existing Constitution, was then read at the Clerk's table.

It was agreed to pass by this resolution for the present.

The third resolution was then read as follows:

Resolved, That the twelfth, twenty-first, and twenty-second sections of the present Constitution ought to be stricken out, as no longer necessary."

No amendment being proposed,

The fourth resolution was read, viz:

Resolved, That the freedom of speech, and of the press, ought to be held sacred, and guaranteed by the Constitution."

No amendment being offered,

The fifth resolution was then read in the words following:

Resolved, That no title of nobility shall be created or granted, and no person holding any office of profit or trust under the United States, or under any King, Prince, or foreign State, shall hold any office under this State."

Mr. Leigh expressed his concurrence in the general principle of policy now laid down, but could not consent to its universality. He had supposed that there were few persons more jealous of the influence of the General Government than he was; but, for this view of the subject, the present provisions of law went far enough. He thought there might be such a thing as an unreasonable jealousy of that Government; and he could not consent to a clause whose extent, as it now stood, would affect all justices of the peace and militia officers, so as to render them ineligible to Congress, and might even raise a question whether counsel temporarily acting for the United States in their professional capacity, would not, in like manner, be disqualified. He was in favor of leaving the entire subject to the Legislature. As to that clause of the resolution which had respect to titles of nobility, any body might have it for him; he felt perfect indifference whether it was out or in.

Mr. Doddridge moved to amend the resolution by striking out the words "United States or."

Mr. Taylor, after some commendatory remarks on the proviso contained in the Act of Assembly on this subject, moved that it be inserted by way of amendment. It is in the words following:

Provided, That nothing herein contained shall be so construed, as to prevent members of Congress from sitting as County Court magistrates, or from holding offices in the militia, or so as to exclude any person receiving a pension from the United States, in consequence of any wound received in war, from any office under this Commonwealth, on account of such pension; or, so as to create any exclusion whatsoever, of

militia officers or soldiers, on account of the recompense they may receive from the United States, when called out into actual duty."

Mr. Powell, concurring in the views of Mr. Leigh, moved to amend the resolution by striking out the word "Resolved" (in effect to destroy it.)

The Chair decided that motions to improve took precedence of a motion to destroy.

Mr. Mercer suggested, that few if any of the Constitutions adopted by other States of the Union contained any reference to the United States' Government at all; but were so framed as to remain entire and unaffected if that Government were to cease to exist. He was as little a friend to the dissolution of the Union, and looked to such an event with as unfeigned and deep-felt a horror as any other man; but, he nevertheless approved of such a form for the State Constitutions. One great end to be attained by it, was, to enable a State to sustain itself as a distinct and perfect Government, even amidst all the anarchy produced by so calamitous an event, as a forcible dissolution of the Federal Union. The definition of the term "office" had been a subject of much discussion in the Legislature. It was not easy legally to distinguish an "office" from a "trust," as relating to this subject. It was at one time voted that a situation in the Board of Public Works was not an office, and members of that Board were allowed to serve and did serve in Congress. The decision was afterwards otherwise. So of prosecutor for the Commonwealth. The gentleman from Brooke, (Mr. Doddridge,) who had once held that situation while a member of the Senate of this State, had contended that it was an office, and wished to make it a ground of resignation.

After some conversation as to the point of precedence between the several motions,

Mr. Leigh opposed the motion of his colleague (Mr. Taylor,) contending that the resolution left alone, would not go as far as the resolution with the proviso inserted. The resolution spoke of "*offices*" only; the statute, of "*places*," as well as offices: and the latter excluded a man who received any "*emolument*" from the General Government, whether he held an *office* under it or not. But if the Constitution once fixed a disqualification, the law could neither increase nor diminish it. He contended that a citizen of Virginia might receive emolument from the United States' Government, and yet be as perfectly independent of that Government as could be imagined or desired. He referred, for illustration, to temporary mail-contractors: the profit they receive, purged them from the charge of dependence: but those who were permanently employed as mail-contractors, stood in a different relation. It would not, he believed, exclude counsel acting on behalf of the United States *pro hac vice*.

Mr. Taylor did not entertain the same opinion with his colleague, (Mr. Leigh). It was with great diffidence that he ventured to differ from him at any time, but the best opinion he had been able to form was, that if the resolution, with the proviso he proposed to annex to it, should become a part of the Constitution, the Legislature would not be inhibited from extending the disqualification beyond, though it could not retrench it within the limit set by that instrument. For the same reason that the Legislature had a right to create the present disqualification, it might extend it, just as if there were no Constitutional provision upon the subject. They could not confer the capacity of holding office, but they were not restrained from creating an incapacity beyond what the Constitution declares. He had wished to see the proviso made a part of the Constitution, because he viewed it as important to the perpetuation of the Federal Government, that offices should not be permitted to be held under it and the State Governments at the same time. None could be more sincerely a friend to that Government than he was, so long as it remained within its own legitimate sphere and sought only the ends for which it was established: and believing as he did, that all the rich blessings which had been hoped for, would be realized from its operation, he was desirous, as its best safeguard, to prevent its interference beyond its own appropriate limits. As the Legislature had thought, and the people of Virginia, he believed, continued to think, that offices under both Governments should not be in the same hands, and, it was probable, that the Legislature would continue the same incapacity that now existed, he should vote for the insertion of the proviso and its permanent incorporation in the Constitution. He thought that offices under the two Governments, were sufficiently distinct—and as long as they could not be held by the same person, he apprehended no danger that the General Government would accumulate more power than was consistent with a preservation of the sovereignty of the States. He hoped both would exist happily together through all time. At all events, from the temper which, at present, seemed to actuate both the Legislature and the people of the State, he was warranted to expect that such might long be the case. Yet it was impossible for human wisdom to foresee what changes of opinion might take place: and the danger to both Governments would certainly be great, should that spirit expire. It was with the utmost good will toward the Federal Government, that he offered the amendment, seeking to strengthen, not to impair it, to preserve, not to destroy.

Mr. Doddridge next addressed the Committee :

I will briefly assign to the Committee, my reasons for opposing the proviso, and in favour of my amendment. In my opinion, the safest course in all legislation, is, to take care to have the text of a resolution or section, so framed, as to admit of no doubt in its meaning, nor ambiguity of construction, so as to render the savings, usually found in a proviso, unnecessary. This course, commonly avoids the doubts and difficulties of construction, resulting from comparing the text with the proviso, and expounding them together. If the proviso should be rejected, and my amendment prevail, the result will be, that it will, as heretofore, be left to every future Assembly to determine, whether, and how far, it is necessary to disqualify persons holding office under the United States, from holding an office under this State. And this is a power, which may be safely left with Assemblies to exercise or not, as they may think politic, under existing and changing circumstances.

The opinion I entertain on this head, is that which I have endeavoured to urge from the time this Convention met, and will continue to urge, until its labours shall terminate. That opinion is this, that the exercise of no power should be inhibited to future Legislatures, except such as it would be impolitic and immoral to exercise, at any future time, and under any possible circumstances. Such, for instance, as the establishment of a particular religious sect—passing an *ex post facto* law, or law impairing the obligation of contracts. These powers ought never to be exercised. Their exercise would be immoral and impolitic, at any time, and under any possible circumstances. I would, therefore, inhibit their exercise forever. Other powers, and among them, the disqualification in question, are not of that character. Public security may require, and sound morality admit, their exercise at one time, and not at another; and these times and circumstances, may safely be left with the Legislature, as they now are.

The report will then shew, that the proviso was rejected, and the amendment adopted.

Mr. Summers acknowledged that a due degree of jealousy as to the encroachments of the General Government was salutary and proper, but thought it might be carried to very inconvenient lengths, and would then produce mischievous consequences. He could not agree with the gentleman from Chesterfield as to the fact, that the present statutory provision was approved by the people—it was certainly not the case in his part of the State. It carried that unreasonable jealousy into all the relations of the citizens to the General Government. A contract to carry, or to distribute the mail, deprived a man of all right to office under the State, from whence great inconvenience was experienced in the West. The most respectable and trust-worthy men in every county were justices of the peace—all these men were excluded from having any thing to do in the transportation of the mails, which consequently fell into hands much less worthy of trust, and thus the interests of the Post Office Department, so vitally important to the whole community, were put at hazard. He was for leaving the matter to Legislative discretion, and they were much more likely to err on the side of extreme caution than the opposite.

Mr. Coalter was in favour of the amendment in order that the subject might be kept before the Committee. No man could tell how far the Federal Government, by a construction of the Constitution, or by amendments to it, might come to operate on the local concerns of the States. Should the power of carrying on Internal Improvements within the States be given by an amendment of the Federal Constitution to that Government, there would, he foresaw, be a need of such a clause as was now proposed to be inserted. This would not impede nor hasten the adoption of such amendment. He did not know, for his part, how far the General Government might be disposed to extend its hands into their houses, and their bed-chambers, and their kneading-troughs, and every where else. A repeal of the existing law would go far to pave a way for them. He was not one of those who believed that all wisdom and all prudence resided in any Legislative body in the country, and he thought that some judicious plan should be interposed to guard against breakers ahead.

Mr. Stanard said, that a few observations would suffice to convince the Committee that the present proposal was an illustration of the principle, that extreme jealousy was often blind, and like “ vaulting ambition,” sometimes “ o’erleaped itself and fell on t’other side.” He referred to that clause of the Bill of Rights which relates to this subject, and which he said had obviously been the result of extreme jealousy, lest the interests of the State and Federal Governments should be improperly mingled; in which case those of the stronger Government would always be sure to predominate. He did not find fault with the sentiment, but disapproved of the shape which it now proposed to assume, because the measure proposed, would have the certain tendency to produce the very evil sought to be avoided. There was no proposition which he thought would more readily command the assent of reflecting minds than this, that as far as practicable, it was desirable that the functions of the General Government should be exercised through organs appointed by, and pertaining to, the State Gov-

ernment. This was the most effectual safeguard against the absorbing influence of the General Government: it would cause that power to look to the Governments of the States for its own wholesome and efficient operation, and prevent the vast mass of patronage which must otherwise grow out of the appointment of all the hosts of functionaries that must be spread over the whole country. He here referred to the criminal jurisdiction of the Federal Courts and the obligation upon the Federal Government, to seek out, apprehend, try, convict and punish offenders. He then went on to shew that this would be in a great degree impracticable without the aid of justices of the peace acting under State authority. Unless they were allowed to issue their warrants for the apprehension of persons accused, crimes against the Union might be committed with impunity. But should the extreme rigour of the proposed proviso be introduced into the Constitution, the moment a justice did this, he lost his office, and his office being forfeited, the validity of his warrant was destroyed. The only remedy then would be to call in a host of United States' justices for the purpose of issuing initiatory process and carrying the laws into effect. Mr. S. adverted to the mistaken impression which had for a short time prevailed in the Legislature, where it was at first strenuously insisted on as necessary to withhold this action on the part of State functionaries, by way of guarding against Federal influence and interference, but the delusion had speedily been dissipated. The question, whether under the existing law, a magistrate does not forfeit his office by so far executing a *trust* under the United States' Government, as to issue process for that Government, had not yet been tried; should it be decided in the affirmative, the greatest degree of private distress must ensue, as the title of much real estate depended on the validity of the act of a justice in taking the privy examination of a *feme covert*.

He had known a case of utter ruin produced by a justice having inadvertently taken such an examination after receiving the appointment of a petty Post Office not worth six dollars a year. The amendment would destroy the existing facilities of giving special bail in the counties, without coming all the way to Richmond. It would prevent the use of any of the jails of the States for United States' criminals, and thus oblige the General Government to expend large sums of money in the erection of prisons, and in providing all the necessary officers to attend them. If a State jailor should take a fee, it would be "emolument" under the General Government: so he must guard the Federal prisoners for nothing or not guard them at all. It would prevent the summoning of Federal juries; for, every jurymen, who should receive a fee from the United States would be incapable of any office under the State. He could go on till night in tracing out such consequences. He hoped the amendment would not prevail: all that was necessary, was to exclude from State employment all who should hold *offices* of emolument under the United States' Government.

Mr. Taylor said, he was far from supposing that the amendment would make the provisions of the Constitution exactly what they ought to be, or the best that possibly could be; but he wished the subject to be retained before the Committee, subject to the suggestions of gentlemen who would improve it. In reply to Mr. Stanard, he thought it a very curious thing, seeing the provisions of the proviso had been passed as far back as 1788, that none of the many formidable consequences enumerated by the gentleman from Spotsylvania had as yet grown out of it. It was now the law of the land, as much as if it were in the Constitution—and yet none of these things had happened. The justices issued their warrants, the jailors took their fees, the juries performed their duty, and all things went on very smoothly. As to justices professing to act after their office was vacated by law, no law nor Constitution either could provide against the consequences. But he could not agree that the issuing of a justice's warrant was exercising any trust under the United States. A justice had a right under the common law to apprehend persons charged with crime, and transmit them to the place where they could be tried. He was acting under the Commonwealth and not under the Federal Government. Such was the common sense construction of the law—and why not of the same words, if in the Constitution? But to prevent all doubt, the proviso could be modified.

The question being taken on Mr. Taylor's amendment, it was rejected—Ayes 16.

The question was then put on Mr. Doddridge's amendment, and decided in the affirmative—Ayes 41, Noes 39.

So the Committee agreed to strike out the words "*United States or*," confining the prohibition to offices under foreign Governments.

The sixth resolution, being literally the same as the ninth resolution of the Legislative Committee, and which has been adopted (relating to the freedom of religion) was stricken out.

The Committee then again took up the resolutions of the Executive Committee.

Mr. Claiborne moved to strike out the second resolution and insert in lieu thereof the following:

"*Resolved*, That there shall be a Privy Council or Council of State, consisting of four members, to be chosen by joint vote of both Houses of Assembly, to assist in the

administration of Government; one of whom shall be chosen from the country West of the Alleghany Mountains; one from the Valley between the Alleghany and Blue Ridge Mountains; one from the country East of the Blue Ridge and above the head of Tide-water; and one from the country between the head of Tide-water and the Atlantic. They shall annually choose out of their own body a President, who, in case of the death, inability or necessary absence of the Governor from the Government, shall act as Lieutenant-Governor. Three members shall be sufficient to act, and their advice and proceedings shall be entered of record, and signed by the members present, to any part whereof any member may enter his dissent, and to be laid before the General Assembly, when called for by them. They may appoint their own Clerk; who shall have a salary fixed by law, and shall take an oath of secrecy in such matters as he shall be required or directed to conceal. A sum of money shall be appropriated by law and divided annually among the members in proportion to their attendance; and they shall be incapable during their continuance in office of sitting in either House of Assembly. The two members who receive the smallest number of votes shall go out at the end of three years, and be ineligible for the three next, and the remaining two, at the end of three years thereafter; and be ineligible for the same period of three years. These vacancies, as well as those occasioned by death or incapacity, shall be filled by new elections, in the same manner and under the same restrictions."

Mr. Fitzhugh called for a division of the question; and it was divided accordingly. Whereupon, the question being put on striking out, it was decided in the negative—Ayes 34, Noes 48.

On motion of Mr. Fitzhugh, the following supplementary amendments to the Executive Report, were agreed to:

"First, That the term of the Governor's office, shall commence on the first day of January, succeeding his election, or on such other day, as the Legislature may from time to time designate: Second, That the Lieutenant-Governor is to be elected in the same manner, at the same time, and for the same term, with the Governor: Third, That the Governor and Lieutenant-Governor, shall be chosen from such persons only, as are native citizens of the United States, shall have attained the age of thirty years, and have been citizens of the State, during the five years immediately preceding the election: Fourth, That both the Governor and Lieutenant-Governor, shall receive for their services a compensation to be determined by law, and to be neither increased nor diminished. During the term for which they shall have been elected, and they shall be liable to be impeached and removed from office, for treason, bribery, or other crimes and misdemeanors: Fifth, *Resolved*, That it shall be the duty of the Governor to execute or cause to be executed all the laws of the Commonwealth—to communicate to the Legislature at every session, the condition of the State, and to recommend to their consideration such measures as he may deem expedient. He shall also be Commander-in-chief of the land and naval forces of the State—shall have power to convene the Legislature, when in his opinion the interests of the State may require it—to fill vacancies occurring during the recess of the Legislature, in offices, the appointment to which is vested in the Legislative body; and to conduct either in person, or by such agents as the Legislature may designate, all negotiations and correspondence with other and foreign States."

Mr. Mercer now called up a resolution sometime since offered by him, in the following words:

"*Resolved*, That all taxes on lands, slaves and horses, shall be founded on a fair assessment of their value; that no one of these subjects shall be taxed separately from the other two, and that when taxed, the same rate shall be charged and levied upon all."

In a brief explanation of this amendment, Mr. Mercer stated his estimate of the present value of lands in the Commonwealth to be ninety millions of dollars: slaves sixty-seven and a half millions: and horses thirteen and a half millions. The supposed disparity of taxation between lands and slaves did not exist.

Mr. Fitzhugh stated his intention to offer the following as a substitute:

"*Resolved*, That the power of the Legislature to impose taxes, ought to be so limited as to prohibit the imposition on property, either real or personal, of any other than an *ad valorem* tax: and that, in apportioning this tax, either for State or county purposes, the lands, the slaves, the horses, and all the other visible property of each individual in the community, (except household furniture, wearing apparel, and such other articles of property as may be exempted by law,) ought to be valued and taxed in proportion to their value: *Provided, however*, That no individual, whose taxable property does not exceed in value dollars, shall be subject to any property tax whatever; *And provided, moreover*, That the Legislature may impose on all professions and occupations usually resorted to for support or profit, such tax as may be deemed reasonable."

Mr. F. said, his object was to tax the entire capital of the community; that of Mr. M. to tax only lands, slaves and horses. His plan had been tried in Maryland, and succeeded to entire satisfaction.

Mr. Mercer said, the gentleman had misapprehended his amendment—it did not confine taxation at all, but proposed a certain ratio between these three as present subjects for it; being designed as a guaranty against the disproportionate taxation of slaves.

After a few further remarks in explanation of his object,

Mr. Mercer moved that the Committee rise. It rose accordingly.

In the House, Mr. Powell moved to meet on Monday, at 10 o'clock, but it was negative—Ayes 39, Noes 44.

The House then adjourned.

MONDAY, DECEMBER 14, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

The House immediately went into Committee of the Whole, Mr. Doddridge in the Chair.

Mr. Summers offered the following resolutions:

“1. *Resolved*, That each county ought to be divided into wards, so that there shall be not less than three, nor more than seven, in any one county. That there ought to be elected in each ward, by the voters qualified to vote for members of the House of Delegates, one commissioner, and that the commissioners elected in the several wards, ought to form a Board of Police for their respective counties.

“2. *Resolved*, That the commissioners of police ought to go out of office, one at the end of each year, to be determined in the first instance by lot; and that successors ought to be elected by their respective wards, to serve for a number of years equal to the number of commissioners in such county, so that one commissioner of police may be chosen in each county, at every annual election.

“3. *Resolved*, That the Boards of Police ought to be charged with the superintendence and direction of the fiscal concerns of their respective counties—with power to assess, levy, and cause to be collected, all local, county, or ward taxes, and to direct the disbursement of the same, to superintend all provisions and expenditures for the support of the poor; and that the opening, preserving, and improving of the public roads and other highways, with the erection of bridges, and other public structures, ought to be confided to the boards of police.

“4. *Resolved*, That it ought to be the duty of the several Boards of Police from time to time, or whenever required by the Governor, to recommend to him suitable persons to fill the offices of justice of the peace, and to make any other recommendations, and perform such other duties as may be required by law.

“5. *Resolved*, That the proceedings of the several Boards ought to be recorded and preserved by such officer as the General Assembly shall designate, and that the Commissioners ought to receive a moderate compensation for their services, to be ascertained by law, and paid out of the county funds.

“6. *Resolved*, That each commissioner of police ought to be a conservator of the peace within his county, and if holding no office, or employment, incompatible with that of justice of the peace, ought to be included in the commission of the peace.”

In supporting the resolutions, Mr. SUMMERS said, he was one of those who believed that there were certain *a priori* principles, which entered into the formation of all just, or free Governments, notwithstanding the arguments, which he had heard in disparagement of this opinion—principles, which if disregarded, must, in a greater, or less degree, mark the tyrannical character of the Government from which they are excluded. One of those principles long concurred in by every friend of rational freedom, was, that the contributions levied from the people, ought, in all cases, to be regulated and controlled by those who pay them. That the taxing power can of right, only reside with, and be exercised by agents, chosen immediately by the people, and accountable directly to them for the exercise of this power. These principles forming the very foundation of our political institutions, are entirely disregarded in the imposition of a large portion of the taxes paid by the people of Virginia. In the form of county levies, our County Courts exercise under our present system, a more extensive power of taxation in many of the counties than that exercised by the Legislature.

The repairing of the highways—the erection of public buildings, and various other objects of expenditure placed under their controul, calls into exercise, an authority in relation to taxation, which, in his opinion ought to be placed in other hands. The

County Courts, he said, do not emanate either directly, or indirectly from the people; they are not responsible to them in any form, and, therefore, cannot be fit agents to decide on the extent of the public burdens, or the expenditure of the public funds. To subject the people to be thus taxed, by agents in whose selection they have never been consulted, was clearly against the Republican maxim insisted upon, where its application was much less obvious; that the taxes of the State, ought to be granted by the people of the State. In looking around for a substitute for the County Courts in relation to this particular power, now exercised by them, he had consulted the experience and example of some of our sister States, and the opinions of one of the most distinguished of our own Statesmen,* and the several conclusions of his mind had resulted in the propositions under consideration. They covered less ground than they probably would have done, had he not witnessed the previous discussions—discussions, which had evinced the reluctance with which any changes were to be made in our existing institutions, and particularly those which proposed any modification of the powers of the existing County Courts. He had listened to all the reasoning which had been offered in relation to those tribunals, without concurring in the animated eulogies which had been pronounced upon them on the one side, or the general condemnation which they had called forth on the other: he regarded them as valuable in many points of view, and was satisfied that they would not be less so, if deprived of some of their anomalous powers. He, however, took pleasure in bearing testimony to the general respectability and integrity of the magistrates of the State, so far as he had had an opportunity of becoming acquainted with them, and particularly of those in that quarter of the Commonwealth in which he was most familiar: he believed as few abuses occurred in the exercise of their various powers, as ought reasonably to be expected under the circumstances of their creation, and the great diversity of subjects confided to them. With the Judicial powers of the County Courts, he had not the slightest inclination to interfere; those courts, he believed, administered justice as cheaply, and as satisfactorily, in the ordinary and less complicated class of cases, as could reasonably be expected from any tribunals, which might be devised to supply their place in the general administration of justice; and as the power was about to be given to the Legislature to make such alterations and modifications in the jurisdictions of those courts, as experience might dictate, he hoped those would become satisfied who looked to the County Courts with less confidence than he did.

The power of perpetuating their own body—of making all appointments to county offices, and levying and disbursing the county taxes, were the anomalous, and incongruous powers, which in his humble judgment ought to be lodged with persons elected immediately by the people.

Our County Courts on the creation of a new county, are usually composed of persons recommended to the Governor by the Delegates, or Senators from the adjoining counties, and thenceforward the addition of their members, depends alone on the choice of those already on the bench. The objections to this mode of keeping up the succession, are many, and obvious, and no where placed in stronger points of view than by Mr. Jefferson in the letter before alluded to. As far as his recollection extended, no one had defended this course of appointment as correct in principle, or desirable in practice: the only difference of opinion seemed to be in devising a mode free from objection. Elections by the people of Judicial officers who may be called upon to decide between those who supported, and those who opposed their election, is, perhaps, among all the modes of appointment, the most objectionable. To

* "In the Legislature, the House of Representatives is chosen by less than half the people, and not at all in proportion to those who do choose. The Senate are still more disproportionate, and for long terms of irresponsibility. In the Executive, the Governor is entirely independent of the choice of the people, and of their control; his Council equally so, and at best but a fifth wheel to a wagon. In the Judiciary, the Judges of the highest courts are dependent on none but themselves. In England, where Judges were named and removable at the will of an hereditary Executive, from which branch most misrule was feared, and has flowed, it was a great point gained, by fixing them for life, to make them independent of that Executive. But in a Government founded on the public will, this principle operates in an opposite direction, and against that will. There, too, they were still removable on a concurrence of the Executive and Legislative branches. But we have made them independent of the nation itself. They are irremovable, but by their own body, for any depravities of conduct, and even by their own body for the imbecilities of dotage. The justices of the inferior courts are self-chosen, are for life, and perpetuate their own body in succession forever, so that a faction once possessing themselves of the bench of a county, can never be broken up, but hold their county in chains, forever indissoluble. Yet these justices are the real Executive as well as Judiciary, in all our minor and most ordinary concerns. They tax us at will; fill the office of sheriff, the most important of all the Executive officers of the county; name nearly all our military leaders, which leaders, once named, are removable but by themselves. The juries, our judges of all fact, and of law when they choose it, are not selected by the people, nor amenable to them. They are chosen by an officer named by the court and Executive. Chosen, did I say? Picked up by the sheriff from the loungings of the court yard, after every thing respectable has retired from it. Where then is our Republicanism to be found? Not in our Constitution certainly, but merely in the spirit of our people. That would oblige even a despot to govern us Republickly. Owing to this spirit, and to nothing in the form of our Constitution, all things have gone well. But this fact, so triumphantly misquoted by the enemies of reformation, is not the fruit of our Constitution, but has prevailed in spite of it. Our functionaries have done well, because generally honest men. If any were not so, they feared to shew it."—*Jefferson's Works*, vol. 4, pp. 286, 287.

confide the power of appointment to the Governor, without the aid of a recommending body, might be an unwise extension of patronage, and in most instances, it would leave the appointments to be made on private and irresponsible advice.

The Boards of Police, he thought, would be free from either class of those objections, and offered a safe alternative, not only for the recommending of justices of the peace, but of many other of the county officers. Elected directly by the people, appointments through their instrumentality would assume somewhat of a popular character, and would unquestionably, in some measure, reflect the public will, in the selection of the public agents. Called into office by the people of their several wards, those boards would be more likely to recommend justices of the peace with a view to the convenience of the people, and to the fitness and qualifications of the persons to be appointed, than can be expected in the present mode of selection.

It is said, that the taxing power of the County Courts, has its foundation in Legislative enactments, and may, therefore, be transferred at the pleasure of that body. That this experiment ought not to be engrafted on the organic law, because, experience may not demonstrate its beneficial character, and if it shall turn out prejudicial, the ordinary Legislature cannot remedy the evil. These arguments, he thought, would lose much of their force by reflecting, that, the power of taxation was among the most delicate of the powers of Government, and which, a free people will always regard with the greatest sensibility: those considerations, he thought, strongly recommended a disposition of this power by the Constitution, in preference to leaving it to the discretion of the General Assembly. Experience, he said, proved the tendency of that body to accumulate, rather than diminish, the powers of those courts, and that it could not well be otherwise, from the number of justices of the peace annually returned as members of the Legislature. However valuable the services of those gentlemen, and he felt no disposition to question their merits, the Committee must recollect, that their number varied throughout the State, from two thousand eight hundred, to three thousand four hundred; and, he put it to gentlemen fairly and frankly to decide, whether this body of men, permanent in their offices, and exercising great influence over public opinion, and over the persons and property of their fellow-citizens, were likely to lose any of their powers or patronage by the action of the ordinary Legislature. He believed, that if a transfer of the taxing and appointing powers, was ever to take place, it must be through the instrumentality of the Convention.

The objection founded on the unchangeable character of a Constitutional provision, he thought, not entitled to the weight which some gentlemen seemed disposed to ascribe to it, as it would be perceived, that the resolutions under consideration proposed to ingraft but the skeleton of this branch of the Government on the fundamental law, and that the Legislature would be plenary, as to the extent—and the manner of exercising the powers proposed to be delegated, would have entire control in limiting and directing the powers of taxation, and in regulating its exercise in all the details: That while the Constitution would provide for the creation of the agents, every thing else connected with the agency, would be left to Legislative provision and modification.

He begged leave, to anticipate another objection which had been suggested to him elsewhere: That the County Court magistrates, although, not elected by the people, or responsible to them, were safe depositories of the power of taxing, because, they are themselves included in the effect of every tax which they impose. To this argument, he answered, that a large proportion of the justices, were usually appointed in the neighborhoods near their respective court houses, for the purpose of ensuring the regular holding of the courts, and the result not unfrequently was, that both taxation and expenditure were governed by this circumscribed interest, to the serious neglect of more distant sections of the counties: That justices of the peace were frequently contractors for work to be done under the authority of the courts of which they were members, and so became more interested in the imposition of taxes, than was consistent with a fair and impartial discharge of the duties of laying them. But the public may suffer as much by the courts' refusing to provide for the erection of bridges, and other public structures, and the repairs of the highways, as by an excess of taxation; and if the justices furnish security against inordinate levies by the portions which they must necessarily pay, the same considerations may in many instances, lead to very injurious omissions of public works intimately connected with the best interests of their counties—transfer this power to boards of police elected in the different wards of each county, and you will place the duties and powers in the hands of persons stimulated by the confidence of their fellow citizens, and whose conduct will be regulated by accountability to public opinion, and responsibility to the constituent body, which rarely fails to bring into action the best means of effecting the proposed ends. Commissioners so elected, can scarcely fail to bring into the public service, a more intimate knowledge of the wants, the interests, and abilities of the people of their respective counties, with a greater degree of sympathy in their wel-

fare and prosperity, than the justices of the peace can be supposed to possess, who are, and ought to be selected without peculiar regard to those qualifications.

Mr. S. requested gentlemen to reflect, that they had the benefit of experience to guide them as to the beneficial effects of committing the subject of local taxation to agents elected by the people: he reminded the Committee, of the taxes imposed and disbursed for the maintenance and support of the poor, by overseers elected in the different parishes, and appealed to the experience of those who had been most attentive to such subjects, if the poor rates were not more judiciously applied, and generally managed with more economy than the county levies.

In connection with the establishment of Boards of Police, Mr. S. said, he looked to more equal distributions of the public burdens; he anticipated the abolition of the poll-tax, which exacted equal contributions from the same number of individuals, whether poor and destitute, or possessed of the greatest affluence, provided they shall be without slaves. This mode of assessing the county taxes, he thought, must shortly give place to a property tax, requiring greater care, system and skill, in the management of its details, than had been heretofore called for by our loose and unequal capitation tax—and for the assessment and administration of the revenue of the counties upon such improved principles, the proposed Boards of Police would be found peculiarly appropriate and convenient. While on this subject, he begged leave to remark, that gentlemen, who drew their rules of equality and justice from a state of society where the number of slaves owned by each member gave a tolerable fair rule for the contribution, could not well imagine the injustice of our road laws in their operation on those quarters of the State where there are but few slaves, and much of the land unoccupied, and held by non-resident proprietors. There the poor man is called upon to contribute an equal share of labor and money, with the rich in opening and improving the roads of the country; there those avenues of intercourse and internal trade are mainly created and sustained by the labor of the settlers, who have comparatively but little interest in their results, while the larger proprietors, whose estates are opened to settlements and sales, and essentially enhanced in value by those operations, most frequently bear no part of the burdens of the improvement. More enlightened legislation, he thought, must very shortly change our system in those particulars, by transferring the weight of contribution from the *persons*, to the *property* of the country.

There was another subject of great interest, for the management of which he thought those Boards of Police would be particularly adapted. He meant the superintendence of primary education. This was in some measure a complex, and in every point of view, a very delicate and important trust; on the successful management of which, much of individual happiness, and national prosperity must depend. He believed it essential to the success of any system of general education, that the affections of the people should be enlisted in its favour, by giving them some participation and controul in its direction and application. A system of education calculated to carry its blessings equally to the cottage, and the wealthy farm-house; which shall place the means of instruction equally within the reach of all, and teach those practical lessons of equality which are acquired in common schools, supported at the common expense, were among the most important benefits which he hoped from the re-organization of the Government.

He however disclaimed any wish, or intention, of drawing upon the wealth of one part of the State, to educate the children of another: the imputation of such a design he said was wholly gratuitous, and without the slightest ground on which to found such a suspicion. No man felt more strongly than he did, the injustice of the imputation; his mind revolted as strongly from any such sinister design, as it did against the injustice of exciting local apprehensions, when no reasonable grounds of fear were to be found. The friends of education in the West, he was satisfied, never contemplated in their most liberal views, any resources for the expense of education, beyond what the Literary Fund may reasonably spare to that purpose, other than contributions within the wards, or school districts, for the support of each particular school. Many, he believed, were prepared to place the burdens of education on the property of the country, by supporting well-organized, and well conducted schools, by assessments upon each district, according to the property and ability of the inhabitants; and he hoped public opinion would shortly authorise a fair experiment upon those principles.

He had adverted to education in part, because of the unspeakable importance of its influence on our Government; resting as it does on public morals and general intelligence. Early elementary instruction, he said, was the great preservative, pledge, and safeguard of our free institutions: as to our parchment Constitutions, he regarded them but as pack-thread and paper, unless sustained by morals, intelligence, and the social virtues. Whenever his anxieties rose on the subject of the perpetuity of our representative system, his mind invariably turned to education for all his hopes—here liberty was secured at its source: while the fountain is pure at its head, occa-

sional turbidness in the stream can produce no lasting diseases in the body politic. The safety of the Commonwealth, he was persuaded, could only be secured by the knowledge, discrimination, and habits of those who are to be the future directors of its destiny—in their morals and patriotism all must rest. He asked the indulgence of the Committee for the time which he had occupied with this branch of the subject, it lay in his way, or he should not have touched upon it; but having adverted to it, he found it sufficient to restrain his reflection on a topic of so much interest.

In explaining that part of his plan which proposed to give to the Boards of Police, the nomination of the justices of the peace, Mr. S. said, the abolition of the present mode of recommending those officers, he found encountered the prejudices resulting from long usage, and that the feature of self-perpetuation, would not be yielded without great reluctance, if at all. Still, however, he hoped that a majority of the Committee would concur with him in this particular provision, but should he be mistaken in this anticipation, that part of the resolution might be rejected, without materially affecting the general objects for which the scheme was intended to provide, although not without, in his opinion, serious disadvantage; so also, as to the provision which proposes to confer on the police-commissioners the powers of conservators of the peace. There are many who cannot from incompatible official situations, hold seats on the bench of the County Courts, and yet be of great value to the community as police-commissioners, and as guardians of the public tranquillity.

The records of those Boards he presumed would be confided to the clerks of the County Courts; but as some important questions in relation to these tribunals were yet unsettled, he deemed it most expedient to leave the recording officer to be designated by law.

Mr. S. in conclusion observed, that when he first offered those resolutions, he had entertained strong hopes that the system, at least in its principal features, would be adopted, but that he was now less sanguine. He had heard principles advanced and advocated here, which denied to the people the capacity of advantageously selecting any of the public functionaries, except those who are to enact the laws, or of conducting any of the operations of the Government, except through this peculiar class of agents. To this circumscribed, and very limited range of popular action, he could not subscribe, but that he could perceive the probable influence of those opinions upon the resolutions under consideration. To his mind, the popular character of the proposed Boards of Police, would add greatly to their practical value, and he thought the gradual process for their removal, would give ample assurance of steadiness of policy, and of purpose, and amply provide for that continuity of knowledge, and of action, so essential to the preservation of all the public interests. If left to his own reflections, he should never have imagined that any serious objections could arise to this mode of creating the public bodies, to whom the fiscal concerns of the counties are proposed to be committed; but that opinions had been developed upon other subjects of very opposite tendency. When it was proposed that the people should elect the Chief Magistrate of the Commonwealth, the proposition was resisted on the ground that it was impossible for them to know who was most fit, and best qualified. Apprehensions of popular excitement—fears of caucuses, and the dread of tumult—the dangers of disorderly assemblies ending in intoxication—the armies of demagogues, and of tavern-politicians, who would take the field; were all arrayed before us in the most appalling forms. When it was proposed to let the citizens in arms choose those who were to lead their platoons, and bear their standards, and to confer on the company officers, the choice of the commanders of battalions and regiments—the dangers of insubordination, the temptations to electioneering, and the disorganizing tendency of the measure, were pourtrayed in the most vivid colors. With those admonitions before him, he could but anticipate like objections in the minds of many, to the election of commissioners of police by the people. He hoped, however, that a majority of the Committee would act on principles more in harmony with the character of our Government, and more congenial with the age. The people of Virginia have for a series of years left the purse strings—the law-making power, and the appointment to all the great offices of the State, in the hands of an Assembly, representing a meagre minority of their number. They have left the whole police duties, with the power of imposing and disbursing the local taxes, in the hands of the magistrates, in whose choice they have no agency, and over whose conduct they have no controul; but they now claim to reform the Government in those particulars, and they will not be turned aside from their purpose.

The second, third and fourth resolutions of Mr. Summers' plan were then read: (See page 626.)

Mr. Powell, approving the residue of the plan, moved to amend it by striking out the word "Resolved" in the fourth resolution, (to destroy it.) He preferred leaving this subject to the Legislature, as the whole scheme was new: it might succeed or not: if not, it was then within reach of a remedy; but if introduced into the Con-

stitution, it must continue, be its evil effects what they would, till another Convention was called.

Mr. Summers thought, the omission of this part of the plan would be injurious to it, but still it might work without it; yet, to meet the gentleman's views, he suggested the middle course: let the magistrates be nominated by the boards of commissioners, and let that nomination be submitted to the County Courts: thus, the nominations would undergo a double filtration.

Mr. Powell thought that all the objections which applied to nominations by the County Courts, applied equally to this scheme.

Mr. Summers said, that these commissioners, situated at remote extremities of the county, were less likely to combine to promote family interests and political feuds.

The question being taken on striking out, it was carried—Ayes 48, Noes 34.

Mr. Johnson, to test the sense of the Committee, moved to strike the word "Resolved," from the *first* resolution, (thereby rejecting the entire scheme,) and the question being taken, it was carried—Ayes 52.

Mr. Powell moved that the Committee now rise, and report its proceedings to the House.

[This motion gave rise to a long, and by far the most desultory debate, which has yet occurred in the Committee: but which, turning mainly on principles of order, it is unnecessary to present to the public.]

Messrs. P. P. Barbour, Scott, Powell, Mercer, Johnson, Fitzhugh, Leigh, Summers, Stanard, Upshur, and Gordon, severally took the floor.

The main principle involved was, whether, after a proposition had been voted by one majority of the Committee, and an amendment appended to it by a different majority, any question was necessary, in Committee of the Whole, on the two united together.

Mr. Mercer, believing there was a majority of the Committee opposed to the proposition of Mr. Gordon, (which distributes according to certain numbers the representation in the Legislature, among the four great divisions of the State,) with part of Mr. Upshur's *appended to it*, (which provides a plan for *future* apportionment,) pressed to have a question taken *on the whole together*.

This was opposed as being not in order in Committee of the Whole, as being useless, so that it might as well be taken in the House.

The question being taken on rising *and reporting*, it was negatived—Ayes 41, Noes 47.

The debate was then renewed, but ended in a motion by Mr. Mercer, that the Committee do now rise, which was agreed to.

It rose accordingly, and thereupon the House adjourned.

TUESDAY, DECEMBER 15, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

Mr. Powell presented the following letter of resignation, which was read and laid on the table:

RICHMOND, DECEMBER 15th, 1829.

SIR,—Circumstances beyond my controul, compel me to resign my seat in the body over which you preside. The remaining delegates from the district will, of course, supply the vacancy occasioned by my resignation. With the strongest feelings, and most heart-felt desire for the best results from your deliberations for our beloved State, with the kindest recollections for yourself and every member of the Convention, I beg leave to subscribe myself your and their friend and fellow-citizen,

H. L. OPIE.

P. P. BARBOUR, Esq. }
President of the Convention. }

Mr. Powell said, that the colleagues of Mr. Opie would select a person to fill his place before the meeting of the Convention to-morrow.

The Chairman informed the House that he should be prepared to report the proceedings of the Committee after about an hour's farther labour in copying: that when the report was completed, it would astonish any one, to find how few of the subjects, which had occupied the debates of the Committee, would be reported upon to the House: the chief embarrassment arose from the fact, that the resolutions numbered fourteen and fifteen had not been passed upon by the Committee at all.

[They are as follow:

"*Resolved*, That the representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge of Mountains, and nineteen East of those Mountains.

"There shall be in the House of Delegates one hundred and twenty-seven members; of whom twenty-nine shall be elected from the district West of the Alleghany Mountains; twenty-four from the Valley, between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of Tide-water, and thirty-four thence below.

"*Resolved*, That the Legislature shall re-arrange the representation in both Houses of the General Assembly, once in every years, upon a fair average of the following ratios, to wit:

"First, of white population:

"Second, of Federal numbers.

"*Provided*, That the number of the House of Delegates shall never exceed , nor the number of the Senate ."]

Mr. Mercer now moved, that the sense of the Committee be taken on these two resolutions, taken together, as an amendment, by way of substitute, for the second resolution of the Legislative Committee; (he afterwards modified it so as to be a substitute for the first resolution of that Committee.)

Mr. P. P. Barbour suggested as a preferable arrangement, that the Committee of the Whole should rise; and in the House be discharged from the farther consideration of the subjects referred to them, and then let each member move, in the House, such propositions as had been considered, (or any others,) and let the question be taken directly on agreeing to them, instead of a question of concurring in them as reported by a Committee. This arrangement could produce no public injury or unfairness to either of the parties, or any member of either.

He moved that the Committee rise; but withdrew the motion, at the request of

Mr. Johnson, who objected to the course proposed, as leaving the proceedings of the House without any definite order, or course of succession. After some farther conversation, Mr. Barbour withdrew his motion.

Mr. Scott moved that the Committee rise *and report*.

Mr. Fitzhugh enquired what was then to be reported as to the fourteenth and fifteenth resolutions?

Mr. Mercer pressed his motion, and the debate on it occupied the Committee during the rest of the day.

He claimed his right to have the question so taken, because there had been an implied agreement when those propositions were offered, that a question should so be taken. This was strenuously denied—and after much recapitulation of what had taken place at the time,

The Chair was asked to decide whether such a motion could be entertained as in order?

The Chair decided in the affirmative. Mr. Goode took an appeal to the Committee. The motion was reduced to writing by Mr. Mercer, in the following form:

"*Resolved*, That the question be put to the Committee, whether the propositions contained in the fourteenth and fifteenth resolutions, being the amendment of the gentleman from Northampton, as amended on the motions of the gentleman from Albemarle and the gentleman from Northampton, be adopted as an amendment by way of substitute for the first resolution of the Legislative Committee, without any motion made that such substitute be adopted."

And the question of order was debated till near three o'clock.

Mr. Mercer was asked whether he would move these two propositions himself, as an amendment to the second resolution?

This he declined; but insisted that the sense of the Committee should be taken on them, as one whole: he wanted this, in order to govern his future course.

The debate was strenuous and spirited; but turning entirely on questions of order, and Parliamentary usage, we adhere to our usual course, in abstaining from presenting it to our readers.

The question was at length taken on sustaining the decision of the Chair, and decided in the negative—Ayes 40, Noes 49.

So the Committee decided that the motion of Mr. Mercer was out of order, and could not be put.

Mr. Mercer then moved that the Committee do now rise and report.

The motion prevailed, and the Committee rose accordingly.

Mr. Doddridge stated, that the report was nearly ready, but wanted some farther copying to complete it.

It was agreed to be received *pro forma*, as if actually made; and it was ordered that it lie on the table, and be printed.

Mr. Gordon moved, that the Committee of the Whole be discharged from all those subjects on which it had not acted.

After some explanations, this motion was agreed to.

The Secretary was ordered to authenticate the upholsterer's bill for carpeting a portion of the Church.

And then the House adjourned.

WEDNESDAY, DECEMBER 16, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

Mr. Powell announced to the Convention, that the Delegation from his district had agreed in the choice of Mr. James M. Mason, to fill the vacancy, occasioned by the resignation of Mr. Opie.

Mr. Mercer presented the following letter from Gen. Taylor of Norfolk :

NORFOLK, DECEMBER 14, 1829.

SIR,—I have been notified this evening, of my appointment as a member of the Convention, to supply the vacancy occasioned by the resignation of Mr. Monroe. Highly as I value this honour, considerations, which I am not at liberty to disregard, forbid me to accept the appointment; and I take the earliest opportunity of communicating this circumstance, that the least possible inconvenience may result.

I have the honour to be,

Very respectfully,

Your obedient servant,

ROBERT B. TAYLOR.

The President of the Convention.

On motion of Mr. Mercer, the letter was laid upon the table.

Mr. Henderson announced to the Convention, that the Loudoun Delegation had agreed in the choice of Mr. Joshua Osborne, now a Senator of this State, to fill the vacancy to which Mr. Taylor had been elected.

On motion of Mr. Doddridge, the Convention then proceeded to consider the report of the Committee of the Whole :

[The Committee of the Whole Convention have, according to order, had under consideration the reports of the several Select Committees, on the different Departments of Government, the Declaration of Rights, &c. together with several resolutions and propositions to them referred, and have made several amendments to the said reports, which they beg leave to submit. These amendments are as follow, viz :

Amendments to the Report of the Committee on the Legislative Department.

First, strike out from the word "Constitution," in the third line, of the third resolution, to the end of the resolution, and insert, "and shall be extended, first, to every free white male citizen of the Commonwealth, resident therein, above the age of twenty-one years, who owns and has possessed for six months, or who has acquired by marriage, descent or devise, a freehold estate, assessed to the value of not less than dollars, for the payment of taxes, if such assessment shall be required by law; second, or who shall own a vested estate in fee, in remainder or reversion, in land, the assessed value of which shall be dollars; third, or who shall own, and be himself in actual occupation of, a leasehold estate, with the evidence of title recorded, of a term originally not less than five years, of the annual value or rent of dollars; fourth, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough, or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: *Provided, nevertheless,* That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor, or marine, in the service of the United States, or by any person convicted of any infamous crime."

8. *Resolved,* That it ought to be provided in the Constitution, that in all elections in this State to any office or place of trust, honor or profit, the votes should be given openly, or *viva voce*, and not by ballot.

Amendments to the Report of the Committee upon the Executive Department.

First, add to the first resolution the words following, to wit : "to be elected by the General Assembly for three years, and to be ineligible for three years thereafter. His term of office shall commence on the first day of January succeeding his election, or on such other day as the Legislature may from time to time designate."

Second amendment, add to the second resolution the following: "to be elected in the same manner, and at the same time, and for the same period with the Governor."

Third amendment, strike out the fifth resolution.

Fourth amendment, strike out the sixth resolution.

Fifth amendment, strike out in the seventh resolution, from the word "Resolved," to the end of the resolution, and insert, "that the mode of appointing militia officers, ought to be provided for by law: *Provided, nevertheless,* That no officer below the grade of a Brigadier General, should be appointed by the General Assembly."

Sixth amendment, strike out the eighth resolution.

Seventh amendment, add the following to the report:

9. *Resolved*, That the Governor and Lieutenant Governor shall be chosen from such persons only as are native citizens of the United States, who have attained the age of thirty years, and have been citizens of the State during the five years immediately preceding the election.

10. *Resolved*, That both the Governor and Lieutenant Governor shall receive for their services, a compensation to be determined law, and to be neither increased nor diminished, during the term for which they shall have been elected, and they shall be liable to be impeached and removed from office, for treason, bribery, or other crimes or misdemeanors.

11. *Resolved*, That it shall be the duty of the Governor to execute, or cause to be executed, all the laws of the Commonwealth; to communicate to the Legislature, at every session, the condition of the State, and to recommend to their consideration such measures as he may deem expedient. He shall also be Commander-in-Chief of the land and naval forces of the State; shall have power to convene the Legislature, when in his opinion, the interests of the State may require it, or on application of a majority of the members of the House of Delegates: to fill vacancies occurring during the recess of the Legislature, in offices, the appointment to which is vested in the Legislative body; to grant reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; and to conduct, either in person, or by such agents as the Legislature may designate, all negotiations and correspondence with other or foreign States.

Amendments to the Report of the Committee on the Judicial Department.

First, in the first line of the first resolution, before the word "court" insert "Supreme."

Second, in the third line of the same resolution, after the word "establish," strike out the word "and."

Third, after the word "courts" in the third line of the same resolution, insert "and in the justices of the peace, who shall compose the said courts; the Legislature may also vest such jurisdiction as shall be deemed necessary, in Corporation Courts and in the magistrates who may belong to the Corporate Body."

Fourth amendment, in the second resolution, third line, strike out the word "first" where it occurs, and insert the same word before "Legislature" in the same line.

Fifth amendment, in the fourth line of the same resolution, strike out the word "held," and insert the word "elected."

Sixth amendment, in the fourth line of the third resolution, strike out "concurrent," and insert "joint."

Seventh amendment, after the word "Assembly," in the fifth line of the same resolution, strike out to the word "but," in the twelfth line.

Eighth amendment, in the fourth resolution, second line, after the word "courts," insert "except justices of the County Courts, and the aldermen, or other magistrates of Corporation Courts."

Ninth amendment, in the fifth resolution, strike out the words "by and with the advice and consent of the Senate."

Amendment to the Report of the Committee on the Bill of Rights, &c.

First amendment, in the second report of the Committee upon the Bill of Rights, &c., fifth resolution, second and third lines, strike out the words "under the United States, or."

The Committee of the Whole have further, according to order, had under consideration, a proposition submitted to the House, on the 30th day of November last, by Mr. Upshur, of the tenor following to wit:

1. *Resolved*, That the House of Delegates shall consist of one hundred and twenty members, of which, there shall be chosen for the First District, or District West of the Alleghany mountain,

For the Second District, or District of the Valley,

For the Third District, or District between the Blue Ridge and the head of tide-water,

For the Fourth District, or District between the head of tide-water and the ocean,

26

22

38

34

2. "*Resolved*, That the Senate shall consist of thirty members, of which, there shall be chosen for the First District, aforesaid, 7
 For the Second District, aforesaid, 6
 For the Third District, aforesaid, 9
 For the Fourth District, aforesaid, 8

3. "*Resolved*, That the Legislature shall have power to re-arrange the Representation in both Houses of the General Assembly, once in every years, upon a fair average of the following ratios, to wit: first, of white population: second, of white population and taxation combined: third, of Federal numbers: *Provided*, That the number of the House of Delegates shall never exceed one hundred and sixty, nor the number of the Senate forty."

To which your Committee beg leave to report the following amendments, by way of substitute, to wit:

"*Resolved*, That the Representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge of mountains, and nineteen East of those mountains.

"There shall be in the House of Delegates, one hundred and twenty-seven members; of whom, twenty-nine shall be elected from the District West of the Alleghany mountain; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of tide-water, and thirty-four thence below.

"*Resolved*, That the Legislature shall re-arrange the Representation in both Houses of the General Assembly, once in every years, upon a fair average of the following ratios, to wit: first, white population: second, Federal numbers: *Provided*, That the number of the House of Delegates shall not exceed , nor the number of the Senate ."]

Mr. Powell enquired of the Chair, what was to be done, in relation to those resolutions of the several Committees, to which there were no amendments?

The Chair replied, that after all the amendments had been gone through, the question would then be put on concurring with the resolutions not amended.

Mr. Doddridge enquired, whether, after the House should have concurred in any amendment reported by the Committee, that amendment would be susceptible of farther amendment?

The Chair replied in the negative: but stated, that any amendment which was proposed to a resolution itself, of either of the Committees, would be in order: and even the amendments to them might be amended, if other matter were included in the motion, so as not to involve the contradiction of striking out, what had been agreed to be put in.

The question then recurring on the concurrence of the Convention with the amendments proposed by the Committee of the Whole to the third resolution of the Legislative Committee:

Mr. Doddridge demanded that the question on concurring be taken by yeas and nays.

Mr. Tyler asked, that the amendment proposed to the third resolution should be divided into clauses, and the question of concurrence be put upon each clause, *seriatim*.

Mr. Leigh enquired, whether, after the amendment should have been disposed of, it would be in order to move a substitute?

The Chair replied in the affirmative.

Mr. Stanard demanded, that the question on striking out the several clauses in the original resolution, in order to introduce the amendments in their room, be also divided, and put separately on each clause:

Which, after some conversation was agreed to.

The question was then put on agreeing with the report of the Committee of the Whole which recommends that the following clause be stricken out, viz: "*Provided*, That no person shall vote by virtue of his freehold only, unless the same shall be assessed to the value of at least dollars for the payment of taxes, if such assessment be required by law."

Mr. Stanard moved that the blank in the above clause be first filled; and that it be filled with the sum of twenty-five dollars.

On this motion, Mr. Powell demanded the ayes and noes, and they were ordered by the House.

Mr. Mercer questioned the right of having the question of striking out drawn into clauses.

The Chair replied, that it was usually conceded as of course; but the House might refuse to permit it.

Mr. Powell withdrew his call for the ayes and noes.

Mr. Thompson now moved to fill the blank with one dollar; stating, that the price at which the State sold its lands being two dollars for one hundred acres, one dollar would purchase fifty acres of land.

Mr. Stanard opposed the motion as going to make the proviso ridiculous and preposterous. The very extent of the proviso is, to prevent men from voting on mere nominal freeholds; and to fill the blank at one dollar, would make the freehold nominal merely, and was in fact, the introduction of Universal Suffrage.

Mr. Thompson said, he should be glad if he could defeat the proviso and make it nominal only. He was one of those who regarded a freehold Suffrage as "ridiculous and preposterous." If there must be any such qualification at all, he was for making it as cheap as possible—and all who thought with him on the question of Suffrage, would consider it their duty to do so. He would tell the gentleman from Spottsylvania, (Mr. Stanard,) that there were votes given in the county of Amherst on land not assessed at eight dollars now, at this present time. The existing Constitution said nothing about the quality of the land; it required a certain *quantity* only. The Constitution gave the same Right of Suffrage on a freehold of fifty acres, that it did on a freehold of one hundred thousand. That might be called "ridiculous and preposterous." While Virginia sold its public lands at two dollars for one hundred acres, to value the freehold at one dollar, (the price of fifty acres) was, in his opinion, neither "ridiculous nor preposterous."

Mr. Stanard said, he had not affirmed that the motion was ridiculous, but that it would make the proviso appear so. Mr. S. had addressed the friends of a property qualification, and not the opposers of it and friends of Universal Suffrage. If there were freeholds in Amherst not worth more than eight dollars, he had not been aware of the fact: they must be, he presumed, on the declivities of the Blue Ridge. He asked the friends of a freehold Right of Suffrage, whether they would introduce a proviso which was a restraint in one part of the State and not in another? If such was the effect of the present Constitution, it had grown out of the changes produced by time, and ought to be remedied.

The question was then put on filling the blank with twenty-five dollars, and negatived.—Ayes 37.

Mr. Scott moved to fill it with ten dollars.

Mr. Brodnax moved twenty dollars.

Mr. Marshall suggested, that it might save time at once to put the question on agreeing with the report of the Committee first: if the clause were retained, the blank could be filled afterwards.

The several motions for filling the blank, were thereupon withdrawn.

Mr. Nicholas was opposed to requiring any specific value in the freehold. The little piece of land of the poor man was as dear to him as the estate of the rich.

Mr. Leigh said, that the effect of this clause was to disqualify many who were already freeholders, but whose freehold might not come up to the required value: He should vote to strike it out, because he would not consent to take away the Right of Suffrage from any of those who now enjoyed it. He was unwilling to disturb a right once vested, though if consulted, when that right was to be granted, he might possibly have refused it.

Mr. Coalter stated a fact which had come to his knowledge in relation to this right of voting. A man being called to serve as a jurymen, was asked whether he was a freeholder? He replied in the negative. The clerk of the court insisted that he was, and reminded him of a deed recorded six months before which conveyed to him a freehold, on which freehold he had voted at the last election. The man replied, that he knew nothing about the deed: that he disclaimed the deed and the freehold too: and when he had voted, had voted as a freeman, supposing himself to have a right to do so.

The question was now put on striking out the first clause, (see above,) and was carried, by ayes and noes.

Ayes—Messrs. Barbour, (President,) Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Baxter, Claiborne, Urquhart, Randolph, Venable, Holladay, Mercer, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stewart, Pleasants, Gordon, Thompson, Massie, Bates, Joynes, Bayly, Upshur and Perrin.—75.

Noes—Messrs. Jones, Johnson, Mason of Southampton, Trezvant, Leigh of Halifax, Logan, Madison, Stanard, Fitzhugh, Taylor of Caroline, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Neale, Rose and Coalter.—20.

So the Convention concurred in the report of the Committee of the Whole, recommending that this clause be stricken out.

Mr. Scott, after adverting to the full attendance of the members of the Convention, (one only being absent, and his attendance could be procured,) moved to lay the re-

port of the Committee of the Whole upon the table, with a view to take up the all-absorbing question of the *Basis of Representation*.

Mr. Doddridge opposed the motion as only leading to a needless consumption of time.

Mr. Mercer suggested, that the gentleman would not obtain that end by pursuing the course he proposed. The proper course would be, to take up first the amendments reported by the Committee.

Mr. Scott replied, that the course suggested by the gentleman from Loudoun would not accomplish the object he had in view. He sought to obtain a settlement of the all-absorbing question of Representation, which affected so many of the great questions before the Convention.

He wished to avail himself of the attendance of a full House, and at once to take up the question of "the negro Senate," as it had been called. He was for encountering the spirit which had so long been haunting the path of the Convention and meeting it at every turn, and for laying it. This was his object and he meant to pursue it.

Mr. Summers was opposed to the motion. The question of a negro Senate might be important in the views of many; but he would not, even for the sake of settling the question as to a negro House of Delegates, depart from the regular order of proceedings. The question was absorbing, indeed, (and he feared it was likely to absorb the liberties of the people of the Commonwealth,) but he could not consent to force it at this moment. Two gentlemen had taken their seats in the Convention for the first time that morning; and it was decorous to allow this question to lie at least one day before they were compelled to give a vote upon it.

The question was taken on postponing the report of the Committee of the Whole, and lost.—Ayes 43.

The question recurred on concurring with the Committee of the Whole, in striking out the following clause of the report of the Legislative Committee, viz: "and shall be extended, first, to every free-white male citizen of the Commonwealth resident therein, above the age of twenty-one years, who owns and has possessed for six months, or who has acquired by marriage, descent, or devise, a freehold estate, assessed to the value of not less than _____ dollars for the payment of taxes, if such assessment shall be required by law."

Mr. Green moved to fill the above blank with two hundred dollars.

Mr. Brodnax made an explanation as to the grounds of his former vote which was not distinctly heard by the Reporter.

Mr. M'Coy moved to fill the blank with ten dollars.

Mr. Leigh with fifty dollars.

Mr. Stanard moved forty dollars.

Mr. Powell twenty-five dollars.

The question was put on two hundred dollars, and negatived.—Ayes 45, Noes 48.

The question was put on forty dollars, and negatived.—Ayes 45.

It was then put on twenty-five dollars, and carried.—Ayes 52.

The question then recurring on concurring with the Committee of the Whole in striking out the clause, it was negatived.

The question was next put on agreeing to strike out the following: "second, or who shall own a vested estate in fee, in remainder or reversion, in land, the assessed value of which shall be _____ dollars."

Mr. Stanard moved to fill the blank with fifty dollars: which, he thought, preserved a proper ratio between an estate in possession and in reversion.

Mr. Claytor moved twenty-five dollars—not seeing any reason why the sum should be increased: the owning of an estate in reversion, gave a man the same interest in the community. He was governed only by that principle.

The question being taken on filling the blank with fifty dollars, it was carried.—Ayes 51.

On motion of Mr. Mercer, the following clause was inserted, viz: "if such assessment shall be required by law."

The question being then put on striking out, it was negatived.

Mr. Leigh rose to offer an amendment, which went not to affect the substance at all, of what had been agreed on, but only to throw it into a more distinct and definite form. He wished to conform it to the language of the Constitution and laws; and also to introduce a class, which, he was well assured, it was not the intention of the Convention to exclude: he meant, co-parceners, tenants in common, and joint-tenants, in a freehold, not large enough as to its number of acres, to fall within the Constitutional limit, but of sufficient value, to entitle it to give a vote, as well as others which were larger. He moved to amend the report, by striking out all from the word "Resolved," to the word "Provided," and to insert an amendment, which he read—but which was subsequently withdrawn.

The question then recurred on striking out the following:

"3d. Or who shall own and *have possessed* a lease-hold estate, with the evidence of title recorded, of a term originally not less than five years, *and one of which shall be unexpired*, of the annual value, or rent of _____ dollars."

On motion of Mr. Stanard, the clause was amended, by striking out the words "have possessed," and inserting in lieu thereof, the words, "be himself in the actual occupation of."

And, on motion of Mr. Mercer, the words, "and one of which shall be unexpired," were stricken out.—Ayes 54.

The question now recurring on striking out this clause,

Mr. Leigh said, that being opposed to extending the Right of Suffrage, to tenants subject to distress by their landlords, he should vote to strike out the clause, and against inserting any other, containing that principle. He demanded, that the question on striking out, be taken by yeas and nays; and it was so ordered.

Mr. Green moved to fill the blank with twenty-five dollars.

Mr. Claytor moved ten dollars.

The motion of Mr. Green was negatived.—Ayes 41, Noes 52.

Mr. Doddridge moved five dollars.

Mr. Stanard moved twenty dollars.

The question being put on twenty dollars; it was carried.—Ayes 47, Noes 47.

The Chair in the affirmative.

The question on striking out was then taken, and decided in the negative by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Roane, Taylor of Caroline, Morris, Garnett, Scott, Tazewell, Grigsby, Loyall, Prentiss and Townes—23.

Noes—Messrs. Barbour, (President,) Marshall, Tyler, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Macrae, Green, Campbell of Bedford, Claytor, Branch, Saunders, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Coalter, Rose, Joynes, Bayly, Upshur and Perrin—68.

So the Convention resolved (by a vote of two-thirds,) to retain the clause admitting lease-holders to the Right of Suffrage.

The question was next put on striking out the following clause:

"Fourth, Or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same."

Mr. Leigh moved to amend the clause, by inserting after the words, "the preceding year" the words, "to the amount of _____."

Mr. Leigh again presenting the case of a freeholder excluded, because his land did not come up to the constitutional limit, while his tenant, paying no tax, was admitted to vote:

He demanded the yeas and nays upon the amendment, and they were ordered by the House.

Mr. Mercer said, the case put by Mr. Leigh could not happen, as the latter part of the clause required the tenant to pay a tax.

Mr. Leigh replied, that this was mere verbal criticism; the tenant might pay a tax of four cents, or ten cents on a horse, and then he could vote, while the owner of his house and land was excluded from the polls. If the Legislature should be possessed with as great a desire to extend the Right of Suffrage as some gentlemen in the Convention manifested, they might lay a capitation tax of one cent, or of one mill, and admit every man to vote. The injustice of excluding the landlord, while the tenant voted before his face, was huge and palpable; and the only remedy was to fix an amount of tax to be paid.

Mr. Mercer replied, that he had not meant his remarks, as a mere verbal criticism. He was not himself in favour of taxation as a qualification at all, because it put the extent of the Right of Suffrage into the power of the Legislature, who might indirectly contract or extend it, by increasing or diminishing taxation. What attracted him to the resolution was the preceding part of it, viz: "that the man should be a house-keeper and head of a family:" this he thought a much better test of interest in, and attachment to, the community, than any landed qualification whatever.

Mr. Fitzhugh said, that on the preceding portions of the report he had voted with comparative indifference; because, taken together, they formed such a complicated and unequal system of suffrage, that it could never be adopted.

Mr. F. said that he had, after much reflection, with great difficulty brought his mind to abandon the freehold Right of Suffrage; and he had done so mainly out of deference to what he believed to be the opinion and wishes of his constituents. And now, in what way ought the right to be regulated? He had thought that the best basis for it was residence, and the possession of property, whether that property were real or personal. He only differed from the gentleman from Chesterfield as to the mode of ascertaining the possession of these requisites. If, said Mr. F. you fix an amount of tax as your test, you create the occasion of a perpetual contest in the Legislature, as to raising or lowering the tax with a view to its operations on the Right of Suffrage.

I have drawn up an amendment which it is my purpose to offer by way of substitute, unless the gentleman from Chesterfield is disposed to avail himself of it and adopt it as his own—I suggest it to the gentleman's consideration: he can offer it or not, as he thinks best. It is in the following words:

“And to all free male white citizens of twenty-one years of age and upwards, who shall have resided two years within the State, and twelve months within the county, city or borough, where they offer to vote, and shall have been assessed during the preceding year, with any portion of the revenue, and have paid the same: *Provided*, That no capitation tax shall ever be laid, and that no individual, whose taxable property is of less value than dollars, shall be subject to any property tax whatever.”

I am aware (said Mr. Fitzhugh,) of one difficulty which attends this plan: it lies in the fact that all property is not assessed; but only horses and negroes.

But this difficulty may be removed by the Legislature fixing an average value upon negroes and horses, and then letting them, as well as all other property, be entered on the commissioners' books by its value alone. These books then, being exhibited at the polls, will furnish a true test of every man's Right of Suffrage, so far as property is concerned. His residence must be proved in a different manner.

I think this will be a less exceptionable plan than fixing a definite amount of tax. I suggest it to him. But if he declines offering it, and his amendment shall fail, I purpose to offer it myself at some future period of our proceedings.

Mr. Leigh said that he had expended—rather wasted, much thought and labour on the subject, and he could assure the gentleman from Fairfax, that it would be impossible to accomplish his object without entering into specification, and that very minutely: without this there was no way of avoiding Universal Suffrage. If that was desired, the course was the simplest in the world: a few words would answer all the purpose. But if it was intended to fix the limit of suffrage at any point short of its universality, specification must be of the essence of the scheme. He knew, very well, that the moment a definite amount of tax was fixed, the Right of Suffrage was, to a certain extent, put within the power of the Legislature, who might give the qualification to almost whom they pleased: but then he would be for fixing the point of requirement so high, that the Legislature would not go up to it for the sake of conveying the right.

He believed, if the blank should be filled with the sum of fifty cents, those whom it was desirable to exclude would not pay that amount for the right of voting. For, though the Right of Suffrage had been represented in this debate as the very dearest privilege of man, it so happened that there were few in the world who were willing to pay *money* for it: very few. But Mr. L. added, that if the amendment should prevail, he should nevertheless vote against the whole proposition: for never, while he retained his senses, would he under any name or form, give his vote to confer the Right of Suffrage on house-keepers, which was in effect to give a vote to his landlord, to increase the power not of the poor, but of the rich. It always had operated to increase the power of the rich man, and give his property an influence over others, not such as legitimately belonged to it, (for to this he had no objection) but such as worked by direct corruption. If the gentleman from Fairfax would fix upon any form of words which would exclude Universal Suffrage while it admitted house-keepers to vote, he should be ready to go with him in the support of such an amendment; but he could not but believe it to be wholly impracticable.

Mr. Fitzhugh asked, if the gentleman did not think, that the amendment he had read, covered the whole ground, except providing for remaindermen?

Mr. Leigh replied, that it did not cover such freeholders, as did not reside on their own land.

Mr. Fitzhugh replied, that he had intended to have added the word freeholder, and would still do it.

Mr. Doddridge said, that the controlling argument against fixing an amount of tax, when the question had been debated in Committee of the Whole, was, that it enabled the Legislature, by putting the tax a cent below the constitutional limit, to curtail the

Right of Suffrage at pleasure—and they would be inclined, probably in that direction, rather than the other, inasmuch as they were themselves for the most part freeholders. Was it not a little extraordinary, that this limitation, which it was said, was to prevent throwing power into the hands of rich men, should be urged by that side of the House, who were for throwing the entire controul of the Government, into the hands of rich men? They urge the argument—they feel the argument.

The question was then taken on Mr. Leigh's amendment, and decided in the negative, by ayes and noes, as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Fitzhugh, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Pleasants, Bates, Neale, Rose and Coalter—42.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Joynes, Bayly, Upshur and Perrin—54.

Mr. Stanard moved to amend the resolution by inserting, after the words "who shall have been assessed" (see above,) the words, "by a tax on property owned by him." He did this, that the Legislature might not by laying some trifling tax of a cent, or a few cents, introduce, in effect, Universal Suffrage.

Mr. Summers opposed the amendment. He thought the gentleman's fears unreasonable. The resolution confines the Legislature to house-keepers and heads of families—beyond that limit they could not go: and if they should admit all the house-keepers, and all the heads of families in the Commonwealth, he, for one, should not consider it any instance of their misrule. Such a clause would exclude a useful class of men; he meant those who hired slaves in performing jobs and contracts. The tax on the slave was for the time being charged upon them; they were *pro hac vice* the owners of the slaves; yet they could not vote under this amendment.

Mr. Doddridge said, that there was another class whom it would exclude, viz: shop-keepers and such as followed any business which required a license.

Mr. Stanard said, it was that class whom he wished to exclude. He wanted to keep out show-men and mountebanks. Why ought the shop-keeper who sells foreign goods to be admitted, while the industrious mechanic who sells his own work is shut out? What was meant by the term head of a family? Did it mean a bachelor who occupied a house? or must he have a wife? Must he have children? Would gentlemen go into the question of colour? It was not an uncommon thing to call a trusty female black a house-keeper. He wished to expel this loose indefinite phrase. The Charter of Williamsburg allowed a house-keeper to vote—and it became a vexed question in that city. He related an anecdote of a student at college who was over twenty-one and had his study in an out-building, who was permitted to vote as a house-keeper. Such a term would prove a mere ball of contention, and would be interpreted in one way or in another, just as circumstances at the moment rendered desirable. It was a seeming limitation, but would operate in practice as none: it was in fact and in truth, nothing else but Universal Suffrage.

Mr. Doddridge observed, that whenever any proposal was made to enlarge the extent of suffrage, it was seen to be met by a declaration of the danger of fraud: but surely the same danger might as well be urged on the other side against Freehold Suffrage. That was liable to as many and as great frauds as the other plans.

The question was put on agreeing to Mr. Stanard's amendment, and decided by ayes and noes in the negative, as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Prentis, Grigsby, Branch, Townes, Pleasants, Bates, Neale, Rose and Coalter—44.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Loyall, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Joynes, Bayly, Upshur and Perrin—52.

The question was then put on striking out the fourth paragraph, and decided by ayes and noes as follows :

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Grigsby, Prentiss, Branch, Bates, Neale, Rose and Coalter—40.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Joynes, Bayly, Upshur and Perrin—36.

So the fourth clause, admitting house-keepers to vote, was retained.

The question now recurring on striking out the proviso, it was put entire as follows :

" Provided, nevertheless, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor, or marine, in the service of the United States ; nor by any person convicted of any infamous offence ; nor by citizens born without the Commonwealth, unless they shall have resided therein for five years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough, or election district, where they shall offer to vote (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated."

On motion of Mr. Claytor, all the latter part of the proviso, beginning with the words " nor by citizens born out of the Commonwealth " to the end, was stricken out.

The question being put on striking out the residue, it was negatived.

Mr. Leigh now offered again the amendment which he had previously moved and withdrawn.

But on some conversation as to its details, he again withdrew it to allow an opportunity to

Mr. Wilson, who moved the following amendment :

" Resolved, That every free white male citizen of this Commonwealth, of the age of twenty-one years, and upwards, who shall have resided in the State two years, and in the county where he proposes to vote one year, next preceding the time of offering such vote ; who shall have been enrolled in the militia, if subject to military duty ; and who shall have paid all levies and taxes assessed upon him, or his property, for the year preceding that in which he offers to vote, shall have a right to vote for members of the General Assembly : Provided, That no person shall be permitted to exercise the Right of Suffrage, who is a pauper ; who is of unsound mind ; who has been convicted of any infamous crime ; or who shall be a non-commissioned officer or private soldier, seaman or marine in the regular service of the United States, or of this Commonwealth ; and the Legislature shall prescribe the mode of trying and determining disputes, concerning the said qualifications of voters, whenever the right of a person to vote shall be questioned."

Mr. Mercer had previously moved an adjournment, with a view to the accommodation of those who were attending under severe indisposition—but it was lost—Ayes 43, Noes 44.

After some farther conversation in relation to Mr. Leigh's amendment, and his determination to re-cast it to meet a suggestion, that was made to him, the motion to adjourn was renewed by Mr. Summers and prevailed.

The House thereupon adjourned.

THURSDAY, DECEMBER 17, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

RIGHT OF SUFFRAGE.

And the question being on a resolution, offered by Mr. Wilson of Monongalia, as an amendment to the third resolution of the Legislative Committee,

Mr. Wilson modified his amendment, so as to read as follows, viz :

" Resolved, That every free white male citizen of this Commonwealth, of the age of twenty-one years and upwards, who shall have remained in the State two years,

and in the county in which he proposes to vote, one year, next preceding the time of offering such vote; who shall have been enrolled in the militia, if subject to military duty; and who shall have paid *all levies and taxes*, assessed upon him or his property, for the year preceding that in which he offers to vote, [provided such taxes shall have been demanded of him,] shall have a right to vote for members of the General Assembly: *Provided*, That no person shall be permitted to exercise the Right of Suffrage, who is a pauper; who is of unsound mind; who has been convicted of any infamous crime; or who shall be a non-commissioned officer or private soldier, seaman or marine in the regular service of the United States, or of this Commonwealth; and the Legislature shall prescribe the mode of trying and determining disputes, concerning the said qualifications of voters, whenever the right of a person to vote shall be questioned."

And on this question, he asked the ayes and noes, which were ordered accordingly.

Mr. Joynes moved to amend the amendment of Mr. Wilson, by striking therefrom the words, "all levies and taxes," and inserting in lieu thereof, the words, "a State or county tax," (so as to require some tax to have been demanded and paid.)

Mr. Wilson accepted the amendment as a modification.

Mr. Claytor suggested the addition of the words, "or Corporation," before "tax."

Which was in like manner accepted by Mr. Wilson.

After some conversation, the question was about to be put on the amendment, as modified, when

Mr. Fitzhugh said, that it must be obvious, that the proposition amounted in substance to *Universal Suffrage*: for, all were subject to a capitation tax. He considered this capitation tax, as one of the most injurious, unequal, and oppressive systems of taxation, that ever was devised; and it had been, from the first, his earnest desire to rid the State of it. With that view, he moved the following as an amendment to the amendment of Mr. Wilson:

"*Provided*, That no capitation tax, either for State or county purpose, shall hereafter be levied—and that no individual, whose taxable property shall be of less value than _____ dollars, shall be subject to any property tax whatever."

In illustration of the unequal operation of the capitation tax, Mr. F. referred to the case of an individual, in his own county of Fairfax, who was one of the wealthiest men in the Commonwealth, but who owned no negroes. That man's contribution was but eighty or ninety cents under this tax. He wanted to see the State rid of it, once and forever. His desire was that no man should enjoy the Right of Suffrage, unless he possessed some property, and enough to shew that he was not a vagabond: he had not fixed upon any definite sum—but had left a blank to be filled with what the Convention might deem reasonable.

Mr. Cooke said, that the gentleman from Fairfax was mistaken, in supposing that the amendment of the gentleman from Monongalia, amounted to *Universal Suffrage*. There were returned in 1828, in one single county of this State, between six and seven hundred persons as delinquent, for the non-payment of their county levies, though over twenty-one years of age. Now, if the delinquency extended, in the same proportion, throughout the State, the amendment of the gentleman from Monongalia, would operate to exclude twenty thousand of these insolvents to the public. It could not then be objected to as *Universal Suffrage*. It would exclude such as he wished to see excluded—all the vagabonds and worthless idlers. He did not mean to be understood as saying, that all those thus returned delinquent, *were* idlers and vagabonds; but the class of delinquents included those who were of that description.

Mr. Fitzhugh said, that as matters now stood, the resolutions admitted a man to vote, who paid any county tax, of any sort, or to any amount however small. If, indeed the system of county taxation was to be adopted, and the county taxes were to be of the same kind as are now laid by the Legislature, then he should have no such strong objection to it; but that was not the fact—and it now fell but little short of *Universal Suffrage*.

Mr. Leigh enquired, to what county the gentleman from Frederick had alluded, when he spoke of six or seven hundred delinquents?

Mr. Cooke answered, the county of Loudoun.

Mr. Leigh said, he took it for granted, these seven hundred delinquents could not have been *residents* of Loudoun. He had, indeed, once heard, that there were eight hundred *paupers* in that county. It was certainly a very incredible state of things: possibly, there were a number of persons there, engaged in some large public work, (perhaps on the river,) who went off before the county levy had been demanded. He must confess himself very sceptical, as to the accuracy of the statement.

Mr. Cooke replied, that he had derived the knowledge of the fact, from one of the members of the Loudoun Delegation. Mr. C. said, he did not know of any public work, going on in that county in 1828, and he did not know why the proportion of delinquents there, was not to be considered as extending to the rest of the State—he should presume so, until the contrary were shewn. All knew what a number of

young men, without property, there were, who were habitually returned delinquent, for the small amount of a county levy. He took this as *prima facie* evidence, that they were not good citizens, but idle, worthless fellows. The amendment of the gentleman from Monongalia, would exclude such from the polls; and, on that account, he was in its favour.

Mr. Mercer expressed his regret, that the name of his county had become involved in the present debate. He should not himself have introduced it: but circumstanced as he was, he felt called upon, by his duty to the gentleman from Frederick, to avow, that it was from himself, that gentleman had derived the information, in relation to the number of persons returned delinquent in a single year, which he had stated to the House, as having been communicated to him by one of the Loudoun Delegation. He held in his hand a statement, procured on another occasion, and for a very different purpose, which contained an annual return of the number of such delinquents, during eight consecutive years, and which, with the permission of the House, he would now read. Mr. M. then read the following, viz:

In 1817,	359	Delinquents.
1818,	454	
1819,	343	
1820,	469	
1821,	572	
1822,	758	
1823,	757	
1824,	831	
1825,	831	

This list had been furnished to him by the clerk of the overseers of the poor. There had once been a poor-house near Leesburg, in which he had found on particular enquiry, but a single native American, the rest being all foreigners. Yet the poor rates in Loudoun were very onerous. It was easy to account for the fact of this large number of delinquents. The persons among whom they were found consisted of *titheables* from sixteen and upward. It would often happen that a father who was poor, had several sons subject to this levy, and was charged not only with his own tax, but with that of his sons. Another source of the apparently large delinquency was to be found in the fact, that the sheriff did not duly enforce the collection of these small dues. The fees allowed for collection amounted to about seven per cent., and where the tax was small, the fees were so trifling that that officer became remiss in hunting up persons from whose contribution he should receive, perhaps, but seven or fourteen cents; and to avoid trouble, he returned them delinquent. Mr. M. did not believe there were more delinquents in Loudoun than in any other portion of the State containing the same amount of population: he could not believe it; because there was no county in the State in a more prosperous condition—the county was large and wealthy, but the estates were owned in very equal proportions throughout.

Mr. Leigh said, that from all he could learn, he was apt to believe that it would not be a possible thing to frame any Constitution whatever, that would be adapted to the residue of the Commonwealth, and at the same time adapted to the county of Loudoun. It stood certainly, in a most extraordinary situation. One of its Delegates had informed the Convention that there was nobody there able and willing to discharge the duties of a justice of the peace. Another told the Convention that it contained seven or eight hundred persons delinquent in the payment of their county dues, and this was owing to the circumstance that there were so many persons between the ages of sixteen and twenty-one, whose parents were unable to pay for them: heads of families that were vagabonds: so it would seem that there must be about six hundred vagabond house-keepers and heads of families in that county.

Mr. Cooke said, the gentleman from Chesterfield, if alluding to him, had entirely misconceived his statement. He had not said that all that number of delinquents were of course vagabonds; but had expressly denied any such opinion: all he had said was, that it included many worthless, idle fellows, to whom he believed he had applied the term vagabond.

Mr. L. resumed: Very well, the gentleman should be correctly understood. Loudoun, then, it appeared, had that number of delinquents, and a gentleman from Loudoun supposed, that many of them were under twenty-one, and over sixteen years of age, who had no means of paying, and could not be forced by the sheriff to pay. Now, he begged gentlemen to observe how this operated in its bearing on the plan of admitting house-keepers and heads of families to the right of voting. That class, it seemed, *included* all the vagabonds. The sheriffs of Loudoun, too, were prone to make false returns: they were in the *habit* of falsifying their returns, to save trouble. Another peculiarity of this same county of Loudoun, was, that it paid a very heavy poor rate, yet there was but one native American in their poor-house: of course, to absorb all this heavy amount of poor rate, it must have more poor aliens and foreigners in it, than any county of the Commonwealth, or probably in the Union:

how else could it require this onerous poor rate? Taking all these things together—that there were none fit and willing to be justices of the peace—that the sheriffs made false returns—that the parents were not able to pay the county levy—that there was a multitude of vagabond foreigners there—so that there was but one American in their poor-house—while they paid a very heavy poor-rate: Putting all these facts together, this Convention were called upon to adopt a provision in the Constitution on the hypothesis that such was the state of things in every other county in the State! He was happy to be able to say from his own personal knowledge, that there was in all this part of the Commonwealth nothing that resembled it in any one particular. He felt very anxious to have a Constitution that would suit Loudoun, but he could not, with that view, consent to take this as a just account of any other county in the State. He was very sure he could not take it as a fair representation of its neighbouring counties, Frederick and Jefferson. He judged from his general knowledge of the state of those counties. He was equally sure it was not true of the county of Chesterfield, though that lay between the two cities of Richmond and Petersburg, where they were cursed with vagabonds from both. It was not true of Henrico, of Norfolk, of Spottsylvania, of Stafford, of Dinwiddie, or of Prince George: although these, too, were contiguous to towns; where vice usually made its resort, and round the skirts of which it was usual to find some of the worst members of society: those who became *house-keepers* in the *Penitentiary*. Such persons were to be found near towns and cities in ten times greater numbers than in any other part of the Commonwealth: yet even there, nothing existed like the unhappy condition of Loudoun.

Mr. Leigh concluded by observing, that the gentleman from Fairfax had given a true account of the nature and tendency of the amendment: it went to introduce Universal Suffrage; and if it did not actually do that, it provided an entering wedge which must open the way to it.

Mr. Mercer rose in reply. He said that if the gentleman from Chesterfield had correctly represented what he had before said, he should not now have risen to trouble the Committee. He had not said there were no paupers in Loudoun, save such as were in the poor-house. Nor did he state that the poor-rates were levied merely to support foreigners. The account of the number of delinquents he had given from a record furnished by the officer he had before named: he held it now in his hand, and it was at the service of any gentleman that chose to examine it. He submitted to the gentleman from Chesterfield, whether it contained any thing that furnished a just argument against the character, principles, manners, or condition of the people of Loudoun. He had not said that the sheriffs of Loudoun were in the habit of making false returns; but that the small fee of seven or fourteen cents did not operate as an inducement to cause them to use diligence in searching for persons who owed a tax of one dollar, or possibly two, to the county. It was common when militia fines were collected, as all gentlemen must recollect who had served on court martials, (as he had done as often as ten or twelve times,) for the sheriff to settle up his accounts; and if gentlemen would go into an investigation of the facts, they would find as many as seven hundred insolvents frequently returned. He believed that the number of delinquents would be found even greater in every other county of the State in proportion to its population than in Loudoun. He was willing to rest the question on that issue. He inferred this from the equal division of property in that county. Foreigners were numerous, it was true: they constituted the mass of white laboring poor. Many of them came into Loudoun, as being the first county over the line in their way south from New England and New York. There existed in New York a society for the express purpose of distributing its surplus labour of population into other parts of the Union: that society were in correspondence with various persons on that subject.

As to public works, there had been none prosecuted in the county of Loudoun, either at the date of those returns, or since: but he had no doubt that the fact he had commented on, would be found to be very common throughout the Commonwealth. He had been led to obtain the paper from which he had read those items, for the purpose of shewing the iniquity (he would call it no less) of the prevailing system of capitation tax, for the preservation of the roads, and the maintenance of the poor: of calling on the poor man equally with the rich, for the contribution of his time and labour to improve roads which he trod only with his feet, but over which neither hoof nor wheel of his ever passed. For such a system, thousands receive the stamp of insolvency. The system was a bad one, and the Legislature ought to repeal it. The fact he had stated was established by record evidence: it could not be questioned—these six or seven hundred persons ought not to be suffered thus to stand as insolvents by the infliction of so unjust an exaction. If gentlemen had any doubts as to what he had stated, he referred them to public records, at not two hundred yards distance from the spot where they were sitting. Let them look at the militia returns (which rested on the same principle,) and they would find that the proportion of insolvents in other counties, was at least as great as in Loudoun. All the poor were not to be

found in the poor-house : they stayed the most of them at home, and were partially sustained by their relations, though in part a burden to the State. It was such as had no friends or relatives to take care of them, especially foreigners, that were obliged to resort to the poor-house. In Great Britain the paupers, he believed, amounted to two millions : but the greater part of them lived at their own homes or with their relatives, and received partial aid from the poor rates.

He had made these statements, because, as a Representative of Loudoun, he felt it his duty to reply to the remarks which had been made. It was certainly painful to be obliged to sit and listen to a course of observations, degrading to the character of the county from which he came, and which seemed intended either to degrade Loudoun, or injure the cause in which she was engaged : but he knew no remedy.

Mr. Leigh said, the gentleman had commenced his remarks by saying, "that *if* he had correctly represented what he had said, he should not have risen." Mr. L. said, he had perfectly understood the tone and temper in which this had been said, and, if it were parliamentary, should certainly meet it in a similar tone.

Mr. Mercer here said, the gentleman was entirely mistaken in his impression—nothing had been meant, in tone or in language, to give any just offence.

Mr. Wilson here observed to the Chair, that he could see no good purpose to which this debate tended.

Mr. Leigh said, he did not understand this temper, tone, and manner of treating him, nor should he submit to it in any form whatever. How could the gentleman tell what he was going to say ?

The Chair told the gentleman from Chesterfield to proceed.

Mr. Leigh said, he had not misrepresented the gentleman from Loudoun, or any fact which that gentleman had stated : but he doubted the accuracy (not the veracity) of the statements which he had made. He was not wholly ignorant of the county of Loudoun, its soil, or the character of its inhabitants—and he doubted extremely the accuracy of the gentleman's information, and I have strangely misapprehended the true state of that county, if it will not be seen that he is wholly misinformed. I was about to shew this. The gentleman says he has record evidence ; he produces a certificate from the clerk of the overseers of the poor ; is that record evidence ? But no matter. If this is true of Loudoun, it is not true of other counties. It will be easy to get a statistical statement to test this, in the clearest and fullest manner. My purpose was to shew that the gentleman from Fairfax was right in the account he gave of the amendment of the gentleman from Monongalia—I think he was right, and I shall vote against all such principles, come they from what quarter they may. I would gladly vote for the amendment of the gentleman from Fairfax, if it were possible for me to do so. But he is going into questions of finance, and it requires a vast deal more time duly to consider such a measure, than has been allowed me, and the profoundest consideration, before I can vote upon it. I certainly cannot vote for it now. I shall vote against it, because I do not clearly see the consequences to which it may lead : and I shall vote against the amendment of the gentleman from Monongalia, because I believe it fairly liable to the objections of the gentleman from Fairfax.

Mr. Fitzhugh would ask gentlemen if the amendment of the gentleman from Monongalia must pass, whether its evil would not be lessened by adopting as an amendment to it what he had proposed ? He invited the attention of the Convention to a single fact which existed in his own county, (and he presumed it might be considered as an average county of the State.) In the year 1821, out of \$3,500 of tax paid by that county, \$35 30 was paid by five hundred and thirty-five of its inhabitants. This was sufficient to shew the vast inequality in the distribution of property. Yet by the capitation tax all were called to pay alike ; and all who did so pay would be admitted by the proposition of the gentleman from Monongalia. He presumed that such as wished to restrain the Right of Suffrage at all, would vote for his amendment, rather than that gentleman's proposition without it.

The question being on Mr. Fitzhugh's amendment,

Mr. Doddridge said, he hoped it would prevail. He had always been of opinion that no tax ought to be laid on a poor man without property. He considered, that the military service which every citizen owed to the State, was an equivalent for its protection of his personal rights, and that taxation was the return he owed for the protection of his property. If he had no property to be protected, he ought, in justice, to pay no tax. He considered the capitation tax not only as very unequal and oppressive as to those on whom it was laid, but extremely inconvenient in its effects upon all those who employed hired hands in any business whatever. Such an employer was obliged to indemnify his hands against all the county levies of every sort, since he could get the same wages in another State, (lying, perhaps, within sight) where he would have none of these levies to pay. A poor mechanic, just out of his apprenticeship, before he had time enough to earn money to pay for the necessary tools of his trade, was called on for road tax, levies and poor-rates. The road-tax was in its operation, very oppressive upon such persons : it occupied ten, fifteen and

twenty days, in some cases, of their time, besides obliging them to travel miles to and from the place where the work was to be done, carrying their tools upon their shoulder. Near where he resided was one of the noblest white glass factories in the United States, conducted altogether by white labor—all the hands had to be indemnified against the capitation, because, at seven miles distance, they could get employment in Ohio at a similar establishment, and at the same wages. It would be very simple to say, that all the impositions of Government for the protection of property, should be laid on property only: while the man who was so unfortunate as by losses, sickness, (and still more unfortunate as by his own irregular habits) to be reduced to poverty, should be subject only to military duty. Mr. D. here referred to the regulations in some other States to exempt the cow, tools, bed, and some few other necessities of a family, from seizure by the sheriff. He asked how there could be any imposition when the sheriff who collected the tax, and who knew whether it had been paid or not, was himself the presiding officer of the election; how could paupers and vagabonds be admitted? He concluded by declaring, that he came to the Convention determined to make the best effort in his power to abolish all capitation tax in Virginia forever.

Mr. Cooke demanded a division of Mr. Fitzhugh's amendment. He was opposed to the capitation tax as unjust and oppressive, and would, therefore, cheerfully vote for the first part of the amendment, but he could not for the latter part of it, which he considered as an impracticable scheme.

After some further conversation, the amendment was divided. And the question being on the following portion of it, viz:

"*Provided*, That no capitation tax, either for State or county purpose, shall hereafter be levied."

Mr. M'Coy expressed his hearty approbation of it, and asked for the ayes and noes, which were ordered.

Mr. Green now moved to amend it by striking out the word "State" before "tax," but the motion could not be received, as there was already an amendment to an amendment, and the rules of order did not permit them going to a third degree.

The question was now taken on the first clause of Mr. Fitzhugh's amendment, and decided in the affirmative by ayes and noes, as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Massie, Joynes and Upshur—50.

Noes—Messrs. Barbour (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Powell, Griggs, Mason of Frederick, Roane, Taylor of Caroline, Morris, Garnett, Chapman, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Thompson, Bates, Neale, Rose, Coalter, Bayly and Perin—44.

Mr. Fitzhugh, concluding from the aspect of things that the second part of his amendment could not succeed, withdrew it.

The question then recurring on Mr. Wilson's amendment, to the resolution of the Committee,

Mr. Stanard opposed it with earnestness, as going to the whole length of putting the Right of Suffrage into the controul of the Legislature, nay of every corporation in the State. For, as the term was indefinite, any company of incorporated persons who chose to lay a contribution on their stockholders in which the State had no interest at all, could thereby convey to them the Right of Suffrage. He dwelt much on the inconsistency of allowing a man who had taxes from the State and from his county of very unequal amount, to omit paying the larger amount, and be allowed to vote on the very smallest: paying a tax of one cent on a head of cattle made him a voter, though he might be delinquent on other taxes to the amount of dollars. Nay, even the one cent might be paid for him by others, or he might vote if it had never been demanded of him. So if the statement of the gentleman from Loudoun was correct, the sheriff of that county by demanding or not some small county levy might exclude or admit some seven or eight hundred votes. But allowing for such parts of these delinquents as were under twenty-one years, he would reckon them at six hundred. These six hundred persons would be voters or not at the pleasure of the sheriff, and would turn any election. If it were right to extend the Right of Suffrage so as to embrace these, still they ought not to be placed so as to depend on the partiality or passions of the officer who conducts the election.

Mr. Coalter observed, that the high-sheriff usually conducted the elections, but it was not that officer but his deputies who collected the county levies, so that the high-sheriff would not be able to say whether the person claiming to vote had paid his dues

or not. What would a candidate have to say to the voters at such an election? "My good fellows, go up to the polls to vote: I will see that your levies are all paid: I cannot offer you any grog, but if you go up there, you will see persons drinking and you will help yourselves. Do you go and vote for such a man, and here is eighteen pence to pay your tax." He said that thus it would certainly be, should the amendment be adopted. It tended to corruption.

Mr. Doddridge replied, that the State tax and the county levies would have been demanded during the summer preceding. It would, therefore, be immaterial whether the election should be conducted by the high-sheriff or his deputy. The taxes would have been received in the County Court. He thought, there was no more danger of this Right of Suffrage being abused than the freehold Right of Suffrage: all gentlemen knew the millions of acres of fictitious land on which freehold votes were given. These titles were proverbially known—and were called tax titles, and sometimes Penitentiary titles. There would be no more danger in the one case than in the other.

Mr. Stanard said the delinquents were returned in the fall: there were six months before the election, during which these arrearages might be paid up. He denied that the return of the sheriff, that the dues had not been paid, was any evidence that they had been demanded: it would be set aside by the sheriff's receipt, or the party might have paid afterwards. This, therefore, was no guaranty at all.

Mr. Fitzhugh said that he should vote for the amendment as it had been amended, though it did not go as far as he wished.

Mr. Claytor insisted that there was no just distinction to be taken between corporation taxes and others, both being laid by the same authority and for the same objects. They were equally burdensome, and should convey equal rights.

Mr. Joynes, with a view to obviate the objection, that the election would be in the hands of the sheriff, moved to strike out the words "provided such tax shall have been demanded."

Mr. Wilson accepted this as a modification.

Mr. Mercer objected to this, and opposed the alteration. The clause had been inserted in the Legislative Committee by a large majority. He referred to the case of the county of Tazewell which was returned on the commissioner's books as containing three millions of acres of land, and by its dimensions could not by possibility contain more than six hundred thousand acres. It was, therefore, made to contain *five times* its real quantity of land. He referred to a case on the same books where the same tract of land was charged three times over, and neither time to the true owners. To rely on such returns would be most unwise.

The question being put on the motion of Mr. Joynes to strike out the proviso, it was carried.

The question being then put on agreeing to Mr. Wilson's amendment, as amended by Mr. Fitzhugh, it was lost by a tie, viz:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, McCoy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, McMillan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Massie, Jonyes, Bayly and Upshur—47.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Baldwin, Johnson, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Bates, Neale, Rose, Coalter and Perrin—47.

So the amendment was rejected.

Mr. Doddridge now moved the following:

"Or who shall have resided within the Commonwealth two years, and for the last year within the county, city, borough or district, where he offers to vote; and who during the last mentioned period shall have actually paid a revenue tax legally assessed on him—and henceforth there shall be no capitation tax [except on slaves] assessed or collected either for State or county purposes."

Mr. Mercer suggested a proviso, "that it had been demanded of him"—which was accepted by the mover.

Mr. Mercer said, he had not been called on to pay this capitation tax in twelve years—and he doubted not the same thing was frequent throughout the Commonwealth. He had formerly been chairman of the Finance committee in the House of Delegates, and the fact was then, he believed, universally admitted.

Mr. Doddridge said, his amendment differed from that of the member from Monongalia, in not admitting the payment of county or corporation tax as a qualification.

Mr. Venable admitted that a capitation tax was improper in its principle, but objected to the exception Mr. D. had introduced in relation to slaves. He accepted the principle the gentleman had on a former occasion advocated, that each individual and each county and district, should be required to pay in proportion to its ability. He then put the case of two adjacent counties of equal ability in population and soil, but one of these having half its population consisting of blacks: the exception would cause that county to pay double, though their ability to pay was the same.

Mr. Doddridge struck out that feature in his amendment.

Mr. Scott moved to amend the amendment, by adding a clause providing that the tax should not be less than one dollar.

Mr. Doddridge asked the ayes and noes on this amendment.

Mr. Nicholas briefly advocated it as necessary to prevent Universal Suffrage. If any tax was to be required, let it have some reality. The very requisition of the payment of a tax went on the idea, that residence alone was not sufficient evidence of attachment to the community.

Mr. Townes said, he had been in favour of an extension of the Right of Suffrage, and had hitherto voted in its favor: but seeing how far it was now attempted to be carried, he should support Mr. Scott's motion.

Mr. Leigh referred to an effort which had once been successful in the Legislature, to lay a tax on man's antient ally, the dog; and it had been advocated as going to increase the stock of sheep: should the present amendment succeed, it would go to increase not the stock of *sheep*, but the stock of *voters*. The payment of a dog tax would make a voter at once.

Mr. L. said, he was now perfectly satisfied that until the great question of the *basis* of Representation should be settled, all the principles respecting property which had hitherto been held sacred, would be in jeopardy.

Mr. Scott said, he should not take any part in the debate. He had risen only to prevent misapprehension. He said he was among those who thought that Government should be based upon property. Government was meant for the protection of property: this was its chief object: and all who had any share in the Government ought to be possessors of property, being that on which Government was to act. He would lay the foundation of Government in the Right of Suffrage, based upon property (not wealth,) the best index of this was the payment of taxes—it was the simplest and the easiest proof. He would make the property qualification so small as to include the bulk of society. He should exclude the monied aristocracy from ruling the country: and attain all the just ends of a popular Government. He should then consider himself as having gone far enough. He considered it as the great secret to know where to stop. On these principles he had voted against those propositions which he thought went too far, in order to secure the popular character of a Government.

Mr. S. protested against any desire to take the Right of Suffrage from any who now enjoyed it; not even if their freeholds were merely nominal. But he was for excluding such persons as were neither freeholders, landholders nor housekeepers.

Mr. Doddridge withdrew his demand for the ayes and noes, declaring his intention to vote against Mr. Scott's amendment, but still to vote for his own, should that not prevail.

Mr. Stanard opposed Mr. D's amendment, as going beyond all the northern States in its latitude of Suffrage, and being equalled only in the new States where Suffrage was universal. In Massachusetts the payment of a capitation tax of \$1 50 was required: that now proposed by the gentleman from Fauquier, did not go so far; it did not require any capitation to filter the community. This was in terms the amendment which had been offered by Mr. Summers in Committee of the Whole, and rejected without a count. It was certainly better to make no requirement of a tax at all, than to hold out these inducements to petty frauds.

Mr. Mercer was in favour of almost any system of Suffrage which excluded taxation. He corrected Mr. Stanard as to Massachusetts—they had no taxes, except on auctions and bank stock; the latter a very heavy one, being one per cent. on their capitals. Once in seven years they laid another, merely, however, to secure to Boston its due representation, (which was regulated by this test.) Mr. M. went into a calculation to shew that an individual who paid two cents on land might vote, while he who owned no land was required to pay \$1.

Mr. Scott said, there was no congruity to the principles of the Bill of Rights in such an amendment. The Bill of Rights required evidence of permanent interest in the community: twenty-five acres of land was admitted as furnishing this evidence, not from its value, but from the permanence of its nature. So leaseholders had been admitted, but not for the amount of tax they paid; their residence and the nature of the property were the considerations. So of a housekeeper; it was not the tax he paid, but his fixed location was supposed (not by him) to furnish this evidence. But here was an amendment which declared that a man who paid one cent tax on a dog, should

be admitted to vote. He could never receive this as any evidence at all. Such a man might be here to-day and gone to-morrow.

Mr. Morgan said, the amendment of Mr. Scott seemed rather more like a restriction in principle on the Right of Suffrage, than an extension. [Mr. Scott observed that his amendment would not apply to any of the other qualifications so as to limit them.] Mr. M. Very well. Then the freeholders are not required to pay a tax before voting, nor the leaseholders either—they vote whether their taxes be paid or not. The housekeeper, who is also a head of a family, may vote after the payment of a tax of one or two cents—indeed of one mill, if it shall be a part of the revenue of the State. But the man whose freehold is not of the value fixed by the Convention, or who shall not be a housekeeper and head of a family, must, by the amendment, pay one dollar. If this sum be agreed to, it will render the amendment almost nugatory. There would be very few persons, not coming within some of the other qualifications, who would own property sufficient upon which to levy so large a sum. It would be confined mainly to merchants and shopkeepers, whose license might be sufficient. According to the present rate of taxes, it would require that a man should own ten horses, or three taxable slaves, upon which to raise a sum sufficient to get him a vote. This, he thought, too unequal. His object in rising, was to ask for the ayes and noes. They were ordered accordingly, and being taken, stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Johnson, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Bates, Neale, Rose, Coalter and Perrin—46.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Massie, Joynes, Bayly and Upshur—48.

So Mr. Scott's amendment was rejected.

Mr. Bayly now moved to strike out all that part of the amendment of Mr. Doddridge, which referred to a capitation tax.

Mr. Doddridge having thereupon moved to amend his amendment, so as to read "except on free negroes or mulattoes,"

Mr. Bayly observed that the Right of Suffrage being very much extended, he considered that there was no probability of the Legislature laying a capitation tax, except on extraordinary occasions, which in the history of a country might occur: he instanced the late war, when Great Britain demanded the Ohio river should be the boundary line between her possessions and the United States, and that all West of that river should be ceded to her. In such a war, every man ought to fight and pay; and a capitation tax, in such a case, ought to be resorted to. But, as the General Assembly heretofore, when the Right of Suffrage was limited to the freehold, had never resorted to such a tax, there was no danger now that they ever would, except on an emergency that would justify it. But there were many men in the country who lived upon their money, stocks, salaries, yearly wages and professions, who would be reached by no other than a capitation tax: and there was another kind of population very expensive to the county and parish revenue—*free negroes*—who could be taxed only by their person; but exempt them from taxes, and you give them a premium to remain in the country, and thereby increase the parish and county taxes. He hoped the motion he made would prevail.

Mr. Doddridge's amendment in relation to free negroes and mulattoes, was negatived—*Ayes* 37.

He then demanded the ayes and noes on Mr. Bayly's motion, and they were ordered accordingly.

Mr. Mercer was in favor of the amendment. He asked, if the gentleman from Brooke seriously apprehended that the Legislature of Virginia would resort to a capitation tax, except in case of some great public emergency and danger? There might be situations of great extremity, when such a measure would be justifiable. Now, the taxes on brown sugar, on coarse teas, on salt, on coarse cottons, and some other articles of general necessity, were in principle capitation taxes: would he wish to prohibit taxation on these in case of great emergency? In case of invasion, it might happen that the Federal arm would not be strong enough to afford the necessary protection: ought the State thus to be trammelled?

The question was taken and decided in the affirmative by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Miller, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Pleasants, Thompson, Bates, Neale, Rose, Coalter, Bayly and Perrin—53.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Johnson, M'Coy, Moore, Beirne, Smith, Baxter, Fitzhugh, Osborne, Pendleton, George, M'Millan, Campbell of Washington, Byars, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Joynes and Upshur—40.

So the clause was stricken out.

The question now recurring on Mr. Doddridge's amendment as amended,

Mr. Stanard moved the same proviso before moved by Mr. Scott, but leaving a blank for the amount of tax.

The ayes and noes being demanded by Mr. Nicholas, were ordered accordingly, and being taken, stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Johnson, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Fitzhugh, Henderson, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Bates, Neale, Rose, Coalter and Perrin—48.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Joynes, Bayly and Upshur—45.

Mr. Naylor moved to amend the amendment, by striking out "revenue," and inserting "county tax;" but it was negatived.

The question being on the amendment as amended,

Mr. Johnson moved to strike out the words "if such tax shall have been demanded;" thinking it a sufficient objection if there were none other, that it opened a subject of perpetual disputes, which there were no means of settling. This motion prevailed without a division.

The question was now taken on the amendment of Mr. Doddridge, as amended by Mr. Stanard, when it was rejected by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Joynes, Bayly and Upshur—46.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Harrison, Baldwin, Johnson, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Bates, Neale, Rose, Coalter and Perrin—47.

Mr. Campbell of Brooke, now moved to amend the resolution of the Legislative Committee, by inserting before the proviso, the following words:

"And to every free white male, a native of this Commonwealth, and a resident therein, of the age of twenty-one years and upwards, who shall have resided one year within the county, city, borough, or election district, in which he offers to vote, and who shall have been assessed, and shall have paid either county or State tax."

On motion of Mr. Campbell, the ayes and noes were ordered on this amendment.

Mr. M'Coy moved to amend the amendment, by striking out "one year," and inserting in lieu thereof, "two years."

Which was accepted by Mr. Campbell as a modification.

Mr. Leigh said, that the distinguishing feature of this amendment was, that it gave the Right of Suffrage to native born citizens of the Commonwealth. That point had been fully discussed in Committee of the Whole. Its effect would be to deny to the citizens of our sister States an equal footing with our own citizens, though they removed permanently to reside within this Commonwealth. There was one very sin-

gular operation it would have on the Southern border of the State. The line separating Virginia and North Carolina was only a "chopped line" as it was called—that is, an imaginary line, being by law a parallel of latitude. This line often ran through the heart of a man's plantation. A citizen of Virginia might have a son born on that part of his estate lying south of the line, yet this son, being his heir, would be excluded so far as this resolution went, from a right to vote in Virginia. Mr. L. disclaimed the slightest jealousy of the citizens of other States, and thought they ought to be received (and so should all persons naturalized) as if they had been natives of the soil.

Mr. Campbell said, that he did not consider naturalized citizens as less meritorious than others, but he had introduced nativity as the strongest of all evidence of attachment to the Commonwealth: he could not get the right extended as far as he wished: but this would give it some extension.

Mr. Giles said, that while he could not find words to express his apprehension, arising from the rage he saw prevailing, (if gentlemen would pardon the term—it was really the only appropriate one,) for extending the Right of Suffrage to universality, he could not but be amused at the progress of those who were under the influence of this rage—he again begged pardon for the term.) He had observed the scene from its commencement. One proposition after another had been put down; and still, with a perseverance which was truly astonishing, and no doubt very praiseworthy, other substitutes were instantly suggested, with the smallest conceivable difference: sometimes so small, that he was puzzled to perceive any at all. It seemed as if gentlemen were really running as competitors, and trying their utmost, to see which should get before the other, toward a goal, which he must ever consider as threatening and fatal to the liberties of mankind. He wished to ask gentlemen, if they were not sensible of the force of this competition, and whether it was not really like to drive them beyond their own wishes? None of those gentlemen avowed any intention to introduce Universal Suffrage—yet they were striving with each other, in propositions, which went so near it, that nobody could distinguish between them. There was an important objection to the proposition of the gentleman from Brooke. How was this nativity to be proved? Must the records be brought up to the polls? If not, how was the question to be tried? A voter presented himself, and said, "I am a native born citizen of the Commonwealth:" how would it be tried? Would the gentleman have a jury summoned?

He had been induced to offer these remarks, with a view to turn the attention of gentlemen, to a great lover of Universal Suffrage—a very great lover of it, and a very great man—he meant the Liberator of Colombia. He had been one of the greatest lovers and admirers of Universal Suffrage. He had made a Constitution, too—and what was it? His first act was to liberate all the slaves; his next was to proclaim Universal Suffrage; then to establish the trial by jury, and admit the slaves to be jurymen; and then to proclaim the reign of universal liberty. But he had thought proper to make one provision for the exclusion of habitual drunkards. He set negroes for the jurors—but the fact never could be proved.

Mr. G. said, it was not the business of the Convention to go into these details; they were summoned to revise and amend a fundamental law; and they must rely on the moral tendency of such laws for all subordinate effects. But where did gentlemen now behold this great lover of Universal Suffrage? Where all Suffrage was put down, and the people subjected to his absolute will and pleasure. He was the great autocrat of the South. The same course might have the same termination elsewhere: it might yet give a liberator to Virginia. The schemes went to take the property of the State out of one set of hands to put it into another.

The gentleman from Loudoun had told the Convention that the freeholders were forty thousand, while the non-freeholders were sixty thousand. Were these forty thousand going to give up the controul of the property of the Commonwealth to those sixty thousand who owned not one foot of land in the world? Any man who should do so in his private concerns, would be declared a lunatic. Let gentlemen see the issue of such schemes elsewhere: they ended in a despot, a liberator, an autocrat, put up, in the first instance, by those who had no interest in the property of the country.

Mr. Henderson, referring Mr. Campbell to the fact that the same proposition had been offered before, remonstrated against its repetition, and reminded him in a latin proverb, that the public interest ought to take place of all other and minor interests.

Mr. Campbell denied that any such proposition had been offered. He had travelled extensively over the new States, and had never seen any of those formidable evils which seemed to haunt gentlemen's imagination in reference to Universal Suffrage. He believed it was owing to the restraints upon the Right of Suffrage, that Virginia was so far behind some of her neighbours in the culture of her soil, and the progress of general improvement.

The question was taken by ayes and noes, and Mr. Campbell's amendment was rejected by the following vote:

Ayes—Messrs. Anderson, Coffman, Williamson, M'Coy, Beirne, Smith, Miller, Baxter, Mercer, Osborne, Cooke, Powell, Mason of Frederick, Naylor, George, M'Millan, Campbell of Washington, Byars, Chapman, Mathews, Oglesby, Duncan, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Joynes and Bayly—36.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Harrison, Baldwin, Johnson, Moore, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Fitzhugh, Henderson, Griggs, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Laidley, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—57.

Mr. Leigh now renewed his motion, made yesterday and withdrawn, to amend the third resolution of the Legislative Committee, by striking therefrom all after the word "resolved," down to the proviso, and inserting a substitute prepared by him.

After some explanatory conversation, and the failure of a motion by Mr. Summers to lay it upon the table, the amendment was agreed to, *nem. con.*

And then the House adjourned.

FRIDAY, DECEMBER 18, 1820.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

Mr. Fitzhugh, from the committee on the compensation of officers, made a report, which was read, and laid upon the table.

The House then proceeded to consider the report of the Committee of the Whole, and concurred in the following amendment to the eighth resolution of the Legislative Committee :

"Resolved, That it ought to be provided in the Constitution, that in all elections in this State to any office or place of trust, honour or profit, the votes should be given openly, or *viva voce*, and not by ballot."

The report of the Committee having been gone through with, the House proceeded to consider the resolutions of the Legislative Committee in order.

The first resolution was read as follows :

"Resolved, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively."

On the suggestion of Mr. Leigh, this resolution was postponed for the present, until the House should be full.

(Mr. Randolph's indisposition had detained him from his seat.)

The second resolution was read as follows :

"Resolved, That a Census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1831, the year 1845, and thereafter at least, once in every twenty years."

On the suggestion of Mr. Powell, that this resolution was immediately connected with the former, it also was passed by for the present.

The third resolution, as amended in the House yesterday, on Mr. Leigh's motion was next read in the words following :

"Every male citizen of the Commonwealth resident therein, aged twenty-one years and upwards, other than free negroes and mulattoes, qualified to exercise the Right of Suffrage by the existing Constitution and laws—and every such citizen being possessed, or whose tenant for years, at will, or at sufferance, is possessed of land of the assessed value of twenty-five dollars, if such assessment be required by law, and having an estate of freehold therein—and every such citizen being possessed as tenant in common, joint tenant or parcener of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the assessed value of twenty-five dollars, if such assessment be required by law ; and every such citizen being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the assessed value of fifty dollars, if such assessment be required by law, (each and every such citizen, unless his title shall have come to him by descent, devise, marriage, or marriage settlement, having been so possessed or entitled for six months,) and every such citizen who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every such citizen, who for twelve months next preceding, has been a house-keeper and head of a family within the city, county, borough or election district

where he may offer to vote, and shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same, and no other persons, shall be qualified to vote for members of the General Assembly in the county, city, or borough, respectively, wherein such land lieth, or such house-keeper and head of a family liveth; and in case of two or more tenants in common, joint tenants or parceners, in possession, reversion, or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to; and the Legislature shall by law provide the mode in which their vote or votes shall in such case be given."

The question then being on the filling of the blank in the above resolution,

Mr. Leigh moved to fill it with the words "three months."

Mr. L. in advocating this amendment said, that he should not trouble the House with many remarks on the propriety of that term. It would be recollected that freeholders, by a resolution already agreed to, were required to have their title for six months before the time they offer to vote; and the question was, whether the non-freeholder, who certainly had a less interest in the community, ought not to have theirs at least three months before they voted? The object of both provisions was to prevent a fraudulent manufacturing of votes with a view to an approaching election. The period of six months in the case of freeholders, though it might not be a perfect safeguard, would, under the prevailing temper and habits of Virginia, be generally found sufficient. It would rarely occur, that votes would be provided so long as six months before an election. If, indeed, such a practice did at all exist, the mode was to make the fraudulent deed just before the election took place, but to antedate it the law not requiring the deed to have been recorded. He was very much gratified to hear the truth of such an allegation denied, as it applied to the Western part of the State, and in the roundest terms. As to the case of leaseholders, occupation was required, and this he presumed would be sufficient, though he could easily conceive a case in which that security would fail. Suppose a tenant to have rented a tract of land, on which he was employing many free white labourers. All he would have to do, would be to partition out the land and re-let it to these labourers, and put them in possession of their respective shares; then let them vote; and immediately after, transfer the land book to the original tenant. He said, he saw no motive to induce any gentleman to desire to leave open a door to frauds of any kind, let the qualification be what it might.

He concluded by moving to fill the blank with three months.

Mr. Summers said, he was unwilling to countenance frauds of any kind, and very desirous of withholding all facilities to their perpetration, particularly in relation to our future elections; but that he was also opposed to multiplying difficulties to the exercise of the elective franchise. He thought the recording of the lease, with a shorter period of occupancy, would sufficiently guard against irregular voters. It would be a troublesome, and somewhat expensive operation, for a tenant to leave his tenement, and put a sub-tenant into possession, and therefore, not likely to be practiced for the purpose of multiplying votes, and that if this mode of evading the law should ever be resorted to, the provisions requiring all who are challenged to purge themselves on oath, would be found a sufficient security against the species of fraud which seems to be apprehended.

The gentleman from Chesterfield had expressed his gratification, on learning that no fraudulent or collusive conveyances had been resorted to in the West, with a view to creating votes; if that gentleman referred to what had fallen from him on a former occasion, he felt persuaded that he would do him the justice to recollect, that while he denied the existence of any such practices within his own observation, he had particularly referred to a striking case which had been reported to him, and in which the attempt had proved abortive, from the prompt and correct course pursued by the commissioners appointed to hold the election. He did not wish to be understood now, or at any other time, as denying the existence of such frauds; he feared from what he had learned here, that they were too frequent throughout the State, and while he would take pleasure in extending every reasonable guard to prevent their re-occurrence, he could not consent to any unnecessary restraints upon those whom it was intended to admit to the Right of Suffrage.

Mr. Leigh said, that a gentleman near him had given him a very good reason for reducing the term from *three* to *two* months: which was, that the leases usually run from 1st January, and were commonly recorded some time during the month of January: as the elections were commonly held in April, if three months were required, the period would be too long. He would therefore be content with two months.

[Some explanations passed between Mr. Leigh and Mr. Summers, as to the denial by the latter's having been qualified in general.]

Mr. L. said, all he wished, was to impose the same security in the case of leaseholds as in that of freeholds: he was aware that it was impracticable to attain perfect security against frauds, for all laws would be evaded.

As to the consideration of expense, though few men would pay much money to *give* a vote, yet there might be men who would willingly give money to *get* a vote.

Mr. Summers was not satisfied with the term of two months. He referred to the practice existing in some part of the State of creating very burdensome leases revokable at the pleasure of the landlord. It would be better to give the people their rights, and not force them to indirect means to attain them. It was customary to transfer the possession of leasehold property in April, as the stock of provender was then consumed, and the new crop would have to be put in. If the term was reduced to one month, he would support the amendment.

Mr. Doddridge explained the great ease with which fraudulent freehold votes might be created by large land speculators; holding the title of lands which had no existence, or for which different grants had been issued. He perfectly agreed in the obligation on all honorable men to unite in the prevention of frauds: they were always practised at the expense of honorable men, because they would not avail themselves of similar means.

He explained the practice of issuing leases on the 1st of April—in his district it was almost universal, and in Wheeling the streets were alive on that day with people, changing their residence and moving their furniture. He apprehended no great danger from removals for the sake of fraudulent taking of possession, to be relinquished after the election was over: such a transaction must become known, and would involve the perpetrators in disgrace. He was in favour of a term of one month.

The question being put, the amendment of Mr. Leigh was agreed to, ayes 53: so the blank was filled with the words "two months."

The question now recurring on the resolution as amended,

Mr. Campbell of Brooke, demanded the ayes and noes, and they were ordered by the House. Being taken, they stood as follows:

Ayes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Matthews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Joyner, Bayly, Upshur and Perrin—56.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Bates, Neale, Rose and Coalter—40.

The House being now full, on motion of Mr. Powell, the House returned to the consideration of the first resolution of the Legislative Committee, which was read as follows:

"Resolved, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively."

MR. VENABLE then rose, and addressed the House in nearly the following terms:

Mr. President: The question of the basis of Representation has been so ably and fully discussed, in the early part of our session, that on this subject I had concluded to say nothing; being fully convinced that my abilities fall far short of those which had been already exerted on the side I should advocate. Yet I have been taught by experience, that one more intelligent and eloquent than another, may not be able with precision to express the views and opinions of that other on any given subject. I have concluded, therefore, to give my own opinions in my own imperfect way; thinking that I may possibly say something, even after all the discussion which has taken place, that may serve for future reflection, although I have not the remotest hope of producing a change in one vote to-day. In expressing my own views, it may have a good effect in another way. I may be in an error, obviously so; and some gentleman may set me right—for, this is what I desire. I wish to aid in laying the foundation of a Government, so that it may be practically beneficial. Whatever form of Government we adopt, it can never be permanent unless it be beneficial and just in its practical operations. In the course of the present discussion, I think I have perceived something in our Western brethren, like prejudice against their fellow-citizens who reside in the slave-holding part of the State; possibly I have been mistaken; but if any do entertain such feelings, to them I would say, that I have had no more controul of the dispensations, that caused me to be born and raised where part of the population are slaves, or which produced that state of things, than those who dwell among the mountains have been able to controul the destiny that made that the place of their nativity, or located the mountains where they are. Both are evils, but I consider the mixed population the greater evil of the two.—We have seen no practicable mode of removing this coloured population, nor have our brethren of

the West been able to remove the mountains. I would wish to consider this question without prejudice. I came here with a desire to aid in forming a Government, which should recognize such rights as had been acquired under our present Government; such as were known and acknowledged. Those rights the new Government must secure, or it will not give satisfaction; it will not work well in practice.

As to the police of the various counties, that has been no cause of collision. Each county has attended to its own internal concerns, and there is no cause of strife on that ground. As to the present rights of the citizens, they are the same in all parts of the State; no difficulty exists in that respect. Our whole difficulty in forming a Government is founded in the circumstance, that the East have a large portion of their population coloured, or slaves, whilst the Western half of the State contains almost wholly a free white population. I shall endeavour to confine my attention to this part of the subject.

And first, I would observe, that all representative Governments that ever have, or can be formed so as to be permanent, must preserve some proportion between representation and taxation. I say, representation should be in proportion, or if not in exact proportion, should bear a just relation to taxation; for, if the *tax-levying* community be very different from the *tax-paying* community, the power of the former over the latter will be exercised oppressively. The question then arises, how shall we have representation so as to be in just proportion to taxation? Taxation, whether of an individual or of a community, or county, should be in proportion to their ability to pay. No rule has ever yet been discovered, which in practice would exactly indicate this ability to pay. That which has been generally adopted as best, is numbers or population: if then the ability to pay be indicated by numbers, or population, the tax to be paid by the different parts of the country, will in general bear the same relation to numbers, and the representation may be safely based on population; but it must be the whole population, from whose labour the revenue is derived. These are the opinions which will govern me, and direct to the conclusions to which I shall arrive on this subject—Certainly there should be a close connection between those who lay the taxes, and those who pay them.

In considering this question, our situation has been compared to other States in the Union, but the comparison will not apply. Virginia has one half of her territory largely interested in a black slave population, while the other half is inhabited by a white population exclusively, or nearly so. There is no State in the Union similarly situated. In the Southern States, where this population prevails, it prevails throughout the whole State, in nearly equal proportions, so that the discussion which occupies us here, can have no place among them: there is no one State whose condition furnishes a correct analogy; but an analogy does exist, and to the extent, in the condition of the Union taken collectively. And what was the determination in that Convention, which framed a Constitution, to suit such a state of things, only existing on a larger scale? What was the expedient hit upon to meet the difficulty, and which did meet that difficulty and remove it? It was the principle that population and taxation should correspond to each other; that the slave States should be taxed only in proportion to the population enumerated. This principle was supported by Virginia herself, and it was adopted and established by the Federal Government in its wisdom.

There is another way of considering the subject, and it is one I am fond of applying to all subjects which I am called upon to examine; that is, to work out the rule; to trace the principle out to its practical details. Let us in this way attempt to examine the rule established by the existing Government, and then try that which it is proposed to form by placing representation on the white basis.

To remove from our minds as far as possible all prejudice, for prejudice I am constrained to believe has its influence, when I see the individuals of this Convention, of equal talents and integrity, directly opposed to each other in opinion, and these opinions generally indicating their geographical situation—I say, to free ourselves from this influence, I will suppose the case of two counties, and suppose that we are the jury which has to try the question as between them: I will take for this purpose the counties of Albemarle and Buckingham; counties containing the same amount of population, and the same quality of soil, but with this difference between them; Albemarle has one-half of its population consisting of black slaves; Buckingham has its population consisting of free white persons only; how will the Government as it now exists operate on these two counties?—I have said they were equal in their population, and in their soil, and hence equal in their crops and in their capacity to sustain taxation; their *land tax* also equal—how are they represented? By two representatives from each. This is very well: here is no inequality or injustice: but Buckingham becomes dissatisfied—She says, I will not consent that slaves shall be represented. I will have a new Constitution, and representation shall be based on “white population exclusively.” The new Constitution is adopted and goes into operation: and what is the effect? It is simply this; while the population of Albemarle is the same, and pays the same amount of tax, Buckingham has two representatives, Albe-

marle but one: this is the effect. The present contest relates to the Treasury; and here, while these two counties pay the same amount of tax, one of them has double the representation of the other. How could Albemarle lay any restraint on Buckingham in her future views of taxation? Is it not plain that Buckingham might levy taxes and appropriate them at pleasure. If Albemarle had a prudent regard for her own safety, would she not rather say, that she would live without such an associate in Government, and rely on her own strength and importance? Indeed, were such a Government, formed it could not be permanent; because it does not contain the elements of justice and protection to its several parts.

Thus far I have supposed the taxation of the two counties to be equal; but now let us extend our views further: Albemarle, long before Buckingham was settled, had a poll-tax on her black population, and as the black population extended through the whole county, there was no material injustice in its operation: it was found convenient, and was her own concern. But after a time her white citizens emigrated over James river and settled Buckingham; and now the *poll-tax* on slaves is no longer a matter of indifference; since its pressure is on Albemarle alone, it becomes an important question. Albemarle has paid an equal tax with Buckingham by way of *land-tax*, and then pays a *poll-tax* of equal amount on half her population, so that the tax on Albemarle is double, and yet the ability to pay, was, as before stated, only the same. Thus there is a new difference between these counties; one has to pay a double tax, while it is at the same time but half represented. Thus, the former difference of two to one, has now become a difference of four to one, two to one in Representation, and two to one in taxation.

I call on gentlemen on this side the mountain to re-consider this subject, and candidly to say, whether the plan they propose does justice to the counties they represent: to say whether such a basis of Representation is one on which our Government can be considered as permanent?

I say again, that no comparison will hold, as to any one of the other States, but that it does hold as it respects the two portions of the Union under the Federal Government. I ask again, what did Virginia contend for when that compact was entered into? That the black population should be excluded in representing her in the Federal Government? No, Sir: no such thing. She maintained the principle, that Representation and taxation should go hand in hand; that if the enumeration of her population was to be reduced on account of the slaves, so should her taxation in the same proportion, or she never could be safe. Such was the demand, and such was the decision of the General Government; and accordingly, her taxation was laid in proportion to the number of her inhabitants which was allowed in the enumeration. But, it may be said, that the case of the two counties of which I have spoken is a supposed case, and may, in some way, be inapplicable and delusive. I will then take the county of Harrison, whose population is ten thousand, and Amherst, whose whole population is also ten thousand, her white population, four thousand four hundred. Here are two counties with the same population: how stands the taxation? Harrison pays \$1789, Amherst \$4000. Now basing Representation on the white basis, Harrison gets two Representatives and Amherst only one, (not quite one). Here, then, you have Harrison paying less than \$2000, and Amherst \$4000, a difference in taxation in favour of Harrison of two to one. Again, Harrison has two Representatives and Amherst one; another difference in favour of Harrison of two to one: put the two advantages together, and Harrison by the white basis, and our present mode of taxing, has an advantage over Amherst of four to one. Can Amherst approve of this? Compare other counties of the East, with the West, and you will find nearly the same result. No Government can be safe or well founded, where the taxation and Representation of its component parts, does not approximate much nearer than four to one, or even two to one. No man can come on my land and deprive me of the possession. But, what avails this possession, if doubly taxed and half represented. I may be taxed to the amount of its annual value, and the funds appropriated in a way in which I have no interest or controul. I may complain; but what does it avail? If only half represented, I shall be voted down. If such power be given, we had best not send Delegates to the Assembly at all—it will be but useless trouble and expense. But then, we have something consolatory about three-tenths of the black population. This is liable to the same objection. In the case stated of Albemarle, taking this into view, she would have something more; and fifty counties under like circumstances, would be entitled to sixty-five Representatives: whilst fifty counties situated as Buckingham, would have one hundred Representatives. Would this be justice to Albemarle or the counties associated with her? Suppose from oversight, or causes such as have been assigned, Albemarle and the counties in like circumstances have not only paid land and other taxes, in proportion to their ability to pay, but also a poll-tax on the slave population, of equal, and in many cases of greater amount. Suppose this poll-tax from the present diversity of the population in the East and West, can be demonstrated to be unjust and oppressive to

the East; as I think it can most clearly. Should the white basis of Representation be now adopted, what prospect would be offered to Eastern Virginia to resist this oppressive mode of taxation—this *poll-tax* on slaves? In relation to the treasury, all that Western Virginia should ask of the East, is, that the West should sustain no wrong from the condition of the black population of the East; that the East should contribute as much as their whole population would, were they white and free. Beyond this is oppressive and unjust.

Land to produce revenue must be combined with labour. A *land-tax* diminishes the value of labour as well as land; and, although, it may be denominated a *land-tax*, its operation is a tax on labour as well as on the land; and this is the case whether the labourers be bond or free; black or white. A tax on land is a tax on every man who labours on it. Where the labourer is free, it is paid by the labourer in the diminution of wages—where the labourer is a slave, it is paid by the master out of the proceeds of the labour of the slave. Had the Federal Government the power, and should levy a poll or other tax on slaves, would it not do injustice to the slave-holding States? Should they also lay a land-tax, would this remove the injustice?

This is precisely the case between Eastern and Western Virginia. Such, Mr. President, have been my reflections, while attempting to form a judgment on this part of the question under consideration. I think the principle adopted by the Federal Government in relation to this subject just and proper; that is, that the number taxed should be represented, and when the whole number is taxed without regard to condition as in Virginia, the whole should be represented. I consider it, therefore, a concession to the West, on the part of the people of the East, when they propose to base Representation on what is called Federal numbers.

MR. SUMMERS then rose and addressed the House on the other side:

Mr. Summers, after inquiring of the President if it would be in order to consider the resolutions offered some time since by the gentleman from Frederick, (Mr. Cooke,) and the resolutions offered by the gentleman from Northampton, (Mr. Upshur,) in connection with the resolution of the Committee of the Whole, now under consideration, and to contrast their relative provisions, and being informed that it would be in order to do so, addressed the Chair in substance as follows:

Mr. S. said he could not longer observe the silence which he had hitherto imposed upon himself, in relation to the important subject under consideration. The deep interest felt by some fifty thousand of his fellow-citizens, in the deliberations of this day, and whom he had the honour in part to represent on this floor, forbid it. The happiness and security of their posterity forbid it. He came here, he said, persuaded, that the people of Virginia had the unalienable right to alter and reform their Government, and to direct its operations when formed: this opinion he had not abandoned. It was one he never should surrender: necessity, and very imperious necessity, could alone limit its influence; that necessity, he thought, now existed, and he was willing to limit it to ground less extensive than it legitimately covered. Its entire surrender was however demanded, and he was required to adopt the principle, that a minority of the people, under peculiar circumstances, should govern, controul, and direct a majority of their fellow-citizens; a sacrifice which he could not make, which he never would make.

Before entering upon the consideration of the subjects before him, he said, he would take leave to correct some errors into which gentlemen had fallen. It had been supposed by the gentleman from Spottsylvania, (Mr. Stanard,) that the West claimed an equal participation in the Legislation of the country, as a debt of gratitude, accruing from the blood and treasure expended in defence of the Eastern frontier during the late war. In this, he said, the Western people were misapprehended; their claim rested on other and stronger grounds. Debts of gratitude, he said, were cancelled when claimed: That the West asked nothing of the bounty of their Eastern brethren; they invoked their justice only. The gentleman from Spottsylvania, he said, had, however, kindly pointed us to the beneficent conduct of our Eastern brethren, on two occasions, when he supposed, that as far as gratitude was concerned, the account was settled. The first was the distribution of the Literary Fund, according to white population; the second, the saving of the West from the pernicious effects of a "splendid scheme of banking," rejected by the Legislature a few years since.

As to the first, Mr. S. remarked, that the policy of the East forbade the education of their slaves; and as white children were the only objects of the public bounty left, it resulted, necessarily, that this bounty should be distributed with reference to the numbers to be benefitted, and without conferring any peculiar boon, on any particular part of the Commonwealth. As to the second, he said, all must recollect the pertinacity with which the Legislature resisted the attempts which were made, to aid the enterprize and industry of the West, by the establishment of a few safe and secure banks; a resistance, which brought into existence, those that were founded in infractions of the laws, without capital, and in their ultimate results, most injurious to the country in which they had existence; that a course of legislation followed, which left

these unauthorised banking institutions, in possession of their ill-gotten gains, without any means of recovery for the great variety of debts which they had contracted with the holders of their notes.

This debt of *gratitude* paid to the West by saving them from banks, was followed in the East by creating and continuing in operation banks of vast capital, extending their branches from the metropolis to all the principal towns. What was to have been the curse of one quarter of the State, was given as a blessing to another. He would not stop to inquire how much of that property, for which political power is now claimed, had resulted from bank accommodations, bank dividends, or bank salaries; but judging from the palaces around us, this source of wealth could not have been inconsiderable.

Mr. S. said, when the question of equal representation was presented to this body, it was resisted on the ground that the slave property of the East could not be safely confided to Western legislation, because but a small proportion of this property was held in that part of the State. To resist this disingenuous objection, the West had referred their Eastern brethren to the alacrity with which the men of the mountains descended to the shores of the ocean, to assist in the defence of the persons and property of their Eastern brethren; not as forming claims upon their gratitude, but for the purpose of repelling the unwarranted assumption, that they could not be safely trusted with their just share in the Government of the country. He asked to whom was this distrust directed? Who are the men you thus hold unworthy of equal political rights? Sprung from the same common stock, their fathers formed the frontier barrier between your fathers and the savages of the wilderness—the descendants of the Campbells and the Prestons—the Lewises and the Dickinsons—the Lowthers and the Morgans, ask their equal rights at your hands; and are they to be told, that although they are the sons of sires who bore your flag triumphant against the Indian hordes at the mouth of Kanawha, and against the no less barbarous enemy on King's Mountain—who stood by you in every peril, and shared with you in every danger, that they must hold a colonial inferiority in the Commonwealth, because they hold fewer slaves than their brethren in the East!

The men, whom you cannot now trust with equal political rights, were not distrusted during the darkest hour of your danger. When the capital was threatened during the late war, your Governor appealed to the patriotism of the country for its defence. The West scarcely heard the alarm, when a corps of cavalry with their intrepid leader, Steenbergen, at their head, left the Ohio shore, for the defence of the Eastern border: Wilson's company of riflemen left the valley of Kanawha for the same destination. The enquiry was not then made, who paid the greatest or least amount of taxes; who owned the greatest or smallest number of slaves. Their common country was in danger, and the only question was, where could service be most effectually rendered. As characteristic of the feeling of that country, he begged leave to mention a single occurrence of devotion to the Commonwealth. Two young gentlemen, who had just closed their studies, and about to enter on their professional career, left the Western frontier on foot, and threaded the mazes of your Western mountains, until they reached Jackson's river. Unaccustomed to this mode of travelling, fatigued, but not discouraged, they embarked in a canoe, at the mouth of Dunlap's creek, encountered the perils of the falls and rapids of James river, to which they were entire strangers. At Richmond they reported themselves, and repaired to Norfolk, where they performed a full tour of duty. With pleasure, he added, that this early devotion to their native State had been followed by a life of honor and usefulness, in each of these gentlemen, and that one of them holds a place upon this floor. He begged leave to enquire, if stronger evidence could be given, of the safety and security with which political rights, and equal participation in the Government, could be conceded to any people. Another ground of distrust, however, he said, had been relied upon. It had been the pleasure of the gentleman from Culpeper, (Judge Green,) to suppose, that the people of the West have contracted a passion for internal improvement, and that this passion may prompt them to excessive taxation, to carry into effect their favorite system of policy. The tendency to abuse the taxing power, by the people of the West, had also been relied on by other gentlemen, as a source of danger to the East, against which they insist upon security. He said, if this disqualifying mania really prevailed in the West, from whom was it derived? He would call the attention of the Convention to the letters of General Washington. The father of his country was scarcely relieved from the toils of the camp, when in writing to the then Governor of Virginia, he urged the necessity of connecting the Eastern and Western waters of the Commonwealth, at the most practicable points, particularly enforcing the practicability and great importance of drawing the Western trade into Virginia, by the Kanawha and James river. In 1810–11, a lowland Legislature organized a commission, for the examination of those rivers, whose report gave to the country the most flattering prospect of securing a very important share of the Western trade by that route. The strong and powerful reasoning employed in that report, gave an increased value to the

enterprize, in the minds of every one; and he only felt restrained from speaking of it, with the warm feelings which it produced, by the presence of the distinguished individual, at the head of that commission. The subsequent reports of the Civil Engineers, continued to increase the confidence, felt in the practicability and value of the work. But in this, as in many other splendid projects, he feared that a due regard had not been paid to all the elements, which entered into the consideration of the subject. It was then supposed that the use of steamboats could not, under any circumstances, reduce transportation from New Orleans to the mouth of Kanawha, to less than from \$ 40 to \$ 50 per ton; and upon this estimate of freight, was the conclusion mainly formed, that the Virginia line of proposed communication, might successfully enter into competition with that through the Gulf of Mexico. Unfortunately for this hypothesis, he had been assured by merchants of respectability, that their goods had been brought from the city of New York, to a point on the Ohio river, near the mouth of the Kanawha, at one dollar and seventy-five cents per hundred, including port charges, insurance, transshipment at New Orleans, and drayage at the falls at Louisville. This single fact, had gone far to remove from his mind, the disqualifying passion, supposed to be felt by the Western people.

In looking through that district of the Commonwealth, but few objects of internal improvement presented themselves, of a character warranting public expenditure. The forming and graduating a few leading roads, comprised the principal benefits, which he thought could now be conferred on that quarter of the State, with prospects of adequate returns to the treasury. The attempts to improve the rivers, had as yet proved abortive, particularly so, in relation to the Great Kanawha. He then adverted to the quarters of the State where public improvements were most required, and where, under any system, having for its object the development of the resources of the Commonwealth, they were most likely to take place.

In doing so, he called the attention of the Convention to the connection of the upper branches of the Roanoke with New river, and to the important influence of such a connection upon the growth and prosperity of Norfolk. The Engineers, in the service of this State, as well as those in the employment of the United States, had concurred in the reasonable practicability of this connection, without tunnelling or deep cutting—an advantage peculiar to this line. And if, in his humble judgment, any portion of the people of the Commonwealth had a deeper interest than their fellow-citizens generally, in a liberal and extensive system of improvement, it was the people of Norfolk, and those interested in its wealth and extension.

As to James river, he said, that although no adequate motive may exist, for mingling its waters with the Kanawha, yet it had high claims upon the resources of the State for further improvement.

The canal of James river, although now comparatively unproductive, would, he thought, produce ample returns. If extended to Lynchburg, its salutary effects upon the trade and commerce of that interesting town, could not be doubted. The Salem turnpike, now languishing for want of funds, might receive an invigoration, which would shortly extend it to the Tennessee line, rendering it a source of much wealth to the intermediate counties, as well as to Lynchburg. The Rivanna and the Rappahannock, he said, also looked to the patronage of the State for the extended benefits which he hoped they were destined hereafter to confer on the agriculture of the country. The Valley country, he said, would expect, as the Chesapeake and Ohio canal progressed, some application of the funds of the State, to the improvement of the Shenandoah and South Branch; but when the whole field of operation was passed in review, and the objects of internal improvement fully considered, he thought every mind must be satisfied, that the West could find no motives for favoring a rigorous and unjust system of taxation, to carry into effect objects, in which they could have but a common interest, and in relation to which, the Midland and Eastern District must feel more deeply concerned than their Western fellow-citizens. The various and varying views of gentlemen, in relation to this subject of internal improvement, would furnish, he thought, some illustration of the weight due to the argument, which denied to the Western people their due participation in the legislation of the country, because of their passion for internal improvement. Some few years since, an enterprize was determined upon, in the town of Baltimore, having for its object the connection of that city with the Ohio river, by a rail-road. Among the authors of this enlightened undertaking, was found the venerable Carroll of Carrollton, and William Patterson, who might be almost regarded as the father of that city. These gentlemen, with eight others, subscribed about half a million of stock. Their example was followed, and the residue of the capital was taken with avidity by their fellow townsmen. Application was made to the Legislature of Virginia, for permission to conduct the road through her territory. This boon, which was to bring no charge upon the treasury of the State, but which looked to the expenditure of a large sum of money among its citizens, was granted, but coupled with a prohibition against uniting the rail-road with the Ohio river, at any point below the Little Kanawha. This reserva-

tion, as he understood, was made for the avowed purpose of improving, by Virginia means, and Virginia resources, the line of the Great Kanawha and James river. So strong was the passion for internal improvement with the lowland gentlemen, that they reserved this entire line for their own especial operations. In the course of the succeeding season, reconnoissances were made by the Engineers of the Company, who directed their examinations to the valleys of the Shenandoah and South Branch, as well as to the valley of Greenbrier and Kanawha. Their reports were sufficiently favorable to induce the company to determine to submit the line to a critical survey and examination, if the Virginia restriction should be removed. Petitions from various quarters were presented to the Legislature, urging the removal of the restriction; but to the astonishment of every body, the bill introduced for this purpose was rejected. It was resisted by lowland gentlemen, whose influence had not been sufficient to call out the resources of the State on this line, but who satisfied one branch of the Legislature, that this Baltimore connection might weaken the affections of the upper country to the Eastern schemes of improvement, and convert that part of the Commonwealth into the "back country of Baltimore." These, he remarked, had been the wayward notions of gentlemen in relation to their Western brethren. Heretofore, they had denied to them all participation in the benefits of the Baltimore rail-road, lest it might diminish their passion for internal improvement by Virginia. Now, their political rights and equal participation in the legislation of the country, was to be cruelly and unjustly denied to them, because they are suspected of cherishing this passion. He enquired, can wisdom approve, or experience warrant the infusion of a principle into the Government, so unequal and unjust in itself, and upon grounds so slight, and for reasons so fallacious?

Having disposed of the *debt of gratitude and the passion for internal improvement*, he proposed to consider another ground, upon which it was deemed unsafe to admit the West to full participation in legislation. He said, it had been contended with great earnestness and plausibility, and not without effect on the public mind, that the taxes were so unequal, that when a Western man paid one dollar, an Eastern man contributed from three to four dollars; and assuming what remained to be proved, it was insisted, that the temptation to exorbitant taxation on the part of the West, and profuse expenditure upon local objects, was so great as to endanger the property liable to taxation in the East. He said, an inspection of the documents from which those results were attempted to be drawn, would at once expose the fallacy of the conclusion at which gentlemen arrived. He affirmed, that wealth consisted in the quantity of labor, which any individual held the means of controlling and directing—that the labour of a country constituted its wealth, and that the products of labour, over and above the consumption of the labourers, constituted the aggregate profits of the community, and that taxation, when properly regulated, was that portion of the profits of labour, which might be required by the exigencies of the Government. Hence, it followed, that taxation to be equal, must take in equal portions from the labour of the country—that testing the taxation of Virginia by this rule, and taking the entire population, both freemen and slaves, as the proper exponent of the labour of the country, the following results, he said, would be found accurate.

The several districts pay per head, as follows:

			Lands and lots.		Slaves.		Horses and carriages.		Total per head.	
			c.	m.	c.	m.	c.	m.	c.	m.
Western District,	-	-	11	3	2	8	6	4	20	5
Valley do.	-	-	22	1	5	6	6	6	34	3
Third do.	-	-	16	8	14	0	4	5	35	3
Tide do.	-	-	15	9	12	6	4	1	32	6

That dividing the State by the Blue Ridge, and placing the taxation of each portion in contrast with the other, the following results would be found:

			Lands and lots.		Slaves.		Horses and carriages.		Total.	
			c.	m.	c.	m.	c.	m.	c.	m.
Western District,	-	-	16	8½	4	2¼	6	5½	27	6¼
Eastern do.	-	-	16	3¾	13	3¾	4	3½	34	0½

This exhibition, he said, would shew that the labour of the West is higher taxed than that of the East, in relation to two out of three of the subjects of taxation, and differs inconsiderably in the amount of tax paid per head in the different quarters of the State. That difference, he said, was owing to the apparently diminished amount paid on land by the extreme Western district, and which he thought might be fully

and satisfactorily accounted for, by reference to present and past systems of taxation, and their influence on that part of the Commonwealth.

Before the year 1817, the tax on land was assessed upon an arbitrarily assumed average of the value in the several districts of the State. By the operation of this rule the inferior lands of the West were taxed beyond any just regard to their annual product, whether from cultivation or appreciation in the market, and the consequence has been, that a vast quantity of the Western lands have become forfeited for the non-payment of taxes, and are now vested in the President and Directors of the Literary Fund. No means, he said, now offered for ascertaining the number of acres which had been transferred by this process from the assessment lists, or of the amount of taxes and damages now due, or annually accruing, on lands so situated, or of the amount annually paid into the treasury for the redemption of lands in this condition. Mr. S. said, that an attempt to investigate this subject at the Auditor's office had furnished him with a statement of the forfeited lands in one of the Western counties only. From this statement it appeared, that there was forfeited to the Literary Fund, in the county of Cabell, 3,130.552 acres, charged with taxes and damages, amounting in the year 1814, to \$19,975. He said this singular expose was a melancholy commentary on our land laws of 1789; under the operation of which, land to nearly double the area of the county, while Logan was yet a part of it, had been sold by the Commonwealth, and the evil was daily increasing by new grants from the land office.

Mr. S. remarked that he had, however, attempted to ascertain what ought to be the probable product of the land tax in the county of Cabell, under a system which assessed the tax upon the *land*, and not upon the pretended titles which the Commonwealth was daily furnishing. He found the area of that county to be 1,033 square miles, equal to 661,120 acres; 154,003 acres only of which were now to be found on the land lists for taxation, and which produced a revenue of \$354.

Mr. S. then entered into a calculation, shewing, that if the residue of the land actually found in that county, amounting to 507,117 acres, was restored to the tax lists, and charged at the same rate with that already on the Commissioners' books, it would augment the land tax of the county of Cabell \$1,519—giving an amount of revenue from land in that county, beyond the sum derived from the same source, in the large populous county of Accomac, to whose representative the Convention had been indebted for so much statistical information—information, which however had unfortunately tended to mislead the public mind, as it no where furnished the amount paid in the different quarters of the State, in proportion to the labour employed in each—a rule of contribution as generally true, and liable to as few exceptions, as the republican principle, unquestioned by the friends of representative Government from the days of John Locke, to the present time, that the people for whose benefit all Governments are instituted, hold in themselves the sovereign power, and in equal portions as relates to each other.

Mr. S. remarked, that he did not intend to follow into detail, the questions of revenue presented by that gentleman; but that he would take occasion to remind him, that if the Eastern peninsula of Virginia contributed more to the treasury than some of the Western counties, it was more than indemnified in its proportion of the expenditure for the support of the Judiciary. Mr. S. said, that he was satisfied that whenever the paternal care of the Government should give quiet and repose to the Western settlers, they would not be found deficient in contributions, either to the treasury or to the defence of the country.

Mr. S. said, that on examining the relative merits of the propositions before the Convention, it might not be unprofitable to look into some of those which had been heretofore pressed upon its consideration. It would be recollected, that Eastern gentlemen had taken their stand upon a proposition which combined white population and taxation as the basis of Representation. He said, that he was accustomed to regard himself as not understanding that, of the results of which he was ignorant. He had, therefore, put into requisition his own arithmetical skill, aided by two gentlemen particularly versed in calculations—one of them furnished him with the combinations, as follows:

Western District,	-	-	-	-	24
Valley District,	-	-	-	-	22
Midland,	-	-	-	-	39
Tide-water,	-	-	-	-	35

In a House of Delegates composed of one hundred and twenty members.

In this computation, men and dollars were regarded as units of the same value, producing about seventy-seven Delegates from the white population, and forty-three from the taxed property. Its application to the extreme Western and Eastern districts, was found to place the inhabitants of each in the following relations to the other: In the Western district, 7,557 white persons, paying taxes to the amount of 1,407 dollars, would be entitled to one Delegate, while in the Eastern district, 4,700 white inhabitants, paying 4,126 dollars, would be entitled to the same representation. By this po-

litical arithmetic, an excess in taxation of 2,719 dollars, was to be compensated, by an excess in persons, equal to 2,857, which balances at the rate of 95 cents per head. This combination, although it rated our Western citizens as five franc pieces, and their Eastern brethren as Louis d'ors, was found more favorable to Western equality than was admissible by the principles of combination, avowed and explained by the authors of that notable project. Their principles of combination required, that to ascertain the number of Delegates to which any particular district would be entitled, it was first necessary to find what number would be given by white population; and, secondly, what number the tax paid by the district would entitle it to. The combined results divided, or averaged, was then assumed as the proper representation. The application of the rule thus modified, was found to give to the

Western District,	-	-	-	-	21
Valley,	-	-	-	-	21
Midland,	-	-	-	-	41
Eastern,	-	-	-	-	37

120

Following out the results of this scheme, Mr. S. said, it would have required eight thousand, six hundred and thirty-seven of the white population of the West, contributing to the treasury \$ 1,608, to send one delegate, while in the Eastern district, four thousand, eight hundred and ten persons, paying \$ 3,665, would have been entitled to equal Representation. Pursuing the inquiry, he said, that it was found, that the political rights of four thousand, one hundred and sixty-five persons, would be sacrificed, in each delegate district of the West, to \$ 2,295 excess of taxation, in each delegate district of the East. In thus comparing the measure of political rights, in the two extreme districts of the State, he said, it was found, that four thousand, one hundred and sixty-five white persons in the West, were required to surrender all their rights in the Government on the payment of \$ 2,295, beyond the average taxation by an Eastern district. By this scale for ascertaining the relative political weight of men and money, it was found, that the highest attributes of men, the dearest immunities of freemen, were to be rated at fifty-five cents per head. This political morality and equality, he said, had been supported by the votes of nearly one-half of the Convention, but happily for the liberties of the country, it had not secured a majority. The next scheme for the security of property, as its friends were pleased to denominate it, but which to his mind, looked to power and power alone, was the proposition of the gentleman from Fauquier, (Mr. Scott,) to apportion the Senate to taxation alone—a proposition, which if adopted, would have given in that body, equal political weight to eighteen thousand, four hundred inhabitants of the lowlands, with ninety thousand, six hundred and ninety-two inhabitants of the Western district; and even this scheme, he said, had been rejected by but a small majority. Mr. S. then entered into a comparison of the relative merits of the resolution under consideration, agreed to in Committee of the Whole, and those submitted by the gentleman from Frederick, (Mr. Cooke,) which had for their object, a House of Delegates, founded on white population, and a Senate based on Federal numbers. He said, that he had used throughout in his computations of the present population of the Commonwealth, the tables furnished by the Auditor; he did not maintain their entire accuracy, but believed they approximated the truth sufficiently near for general purposes of enquiry and comparison.

According to those tables, he said, the apportionment of a House of Delegates of one hundred and twenty-eight members ought to give to the

Western District	34
Valley,	26
Midland,	37
Eastern,	31

The proposition of the gentleman from Albemarle, (Mr. Gordon,) concurred in by the Committee of the Whole, gave as the present apportionment in a House of one hundred and twenty-seven members, the following proportions:

Western District,	29
Valley,	24
Midland,	40
Eastern,	34

Placing a majority in the hands of the country east of the Blue Ridge, of twenty-one, while the basis of white population, denied to that country a majority larger than eight. It proposed a Senate of thirty-two members, distributing thirteen West of the Blue Ridge, and nineteen East of that range of mountains—while the present apportionment of that body, enlarging it to thirty-two members, gives a Representation equal to twelve and twenty. He said, that contrasting this scheme with the results of white population in the House of Delegates, and the present condition of the Senate, it sacrifices thirteen delegates in the West, and yields one additional Senator to

that district. Should the future Senate be composed with reference to Federal numbers, the relative apportionment of that body, he said, would undergo no sensible change, as he had found upon computation that the West would be entitled to eleven and a quarter Senators, in the present state of the population. Mr. S. proceeded to remark upon the effect of the proposed apportionments, upon the district West of the Alleghany mountains. That country, he said, was divided into twenty-six counties, now sending fifty-two delegates, to a House composed of two hundred and fourteen members, equal to thirty-one in a House composed of one hundred and twenty-eight members; that it now sent four and a half Senators, nearly equal to six in a Senate of thirty-two—and what were the inducements, he asked, for gentlemen representing that country, to reduce its present influence in the House of Delegates, without any acquisition in the Senate; a sacrifice not called for, in support of any principle connected with Representative Government, but on the contrary avowedly supported on the ground, that it was founded on no principle whatever, except the equitable notions of its author? If, said he, the Western delegation can be justified, in accepting a present apportionment, so unequal and unjust, in relation to their constituents, that justification must be found in the salutary operations of a future rule of apportionment. The gentleman from Albemarle, he said, had given them none to appeal to: that presented by the gentleman from Northampton, (Mr. Upshur,) as it stands now amended by the Committee of the Whole, was alone pressed upon the acceptance of the West, by either of the gentlemen.

He said, it came to us recommended by the votes and advice of the most revered and respected members of the House. It was urged as a measure of conciliation and compromise, as one that called for equal concession of the different grounds sustained here; that while one side had contended for taxation and population combined, or Federal numbers as its equivalent, the other had insisted on white population alone as the true basis of Government: That taking those two as the extreme rules, their combination, and the average of both, ought to be occupied as the middle ground: That here equal, and only equal sacrifices of opinion, were made on the altar of concord. So strong was this appeal, so ably was it enforced by the highest reasoning powers of this country, that he said he had been for some time in deliberation as to the vote which he ought to give. An examination of the whole ground, and a comparison of the concessions required, had been necessary to convince him of the unequal, and consequently unjust abandonment, which was asked at his hands.

The principle affirmed on one side was, that the people were capable of self-government, and ought to participate equally in its formation, and that a majority ought to give the direction of its action. On the other side it was contended that a portion of the people ought to hold an increased influence in the formation and direction of Government, either in proportion to the taxes paid by the different quarters of the State, or to the number of slaves held in the different portions of the Commonwealth, by the application of which rule a minority of the people from the adventitious circumstances of wealth or situation, might, and probably would, have the Government in their hands, and exercise it independent of, and uncontrolled by, the majority. He denied, that the proposed accommodation attained middle ground, and insisted, that it only increased the numbers of the minority to whom it proposed to confide the Government, and illustrated the effects of the proposed compromise of the question of future apportionments by supposing three hundred thousand free white citizens to reside West of the Blue Ridge, and two hundred thousand East of that Ridge. He said, the slave population in the East exceeded that of the West, three hundred and forty-six thousand, seven hundred and seventy-two, and if three-tenths were introduced into the body politic, it would give an increase of political units to the East of one hundred and four thousand; with the aid of which, two Eastern men would balance three Western men, as long as their relative state of the population remained, and this pernicious element of power continued. Its influence would not, he said, be limited to the controul of the action of the majority, when that action might be at variance with the interests or wishes of the minority, but would place the entire law-making power in the hands of the minority, to be exercised independent of the majority, and uncontrolled by their unanimous wishes and entire interests. If it was determined to perpetuate power in lowland hands, and to balance three of his constituents, with two of the favoured district, it was of but little consequence on what pretext the injurious and degrading policy was made to rest; no gilding could induce him to swallow the pill; it must produce nausea in whatever combination it may be given—and cannot long be retained by those upon whom you force it.

With this view of the subject, he said, he never could consent to the proposed measure of compromise; he never could affirm a principle that denied to the people of Virginia the capacity of self-government, and from which resulted the republican rule, that the interests of society could only be confided to a majority of its members. He thought, that it was fully as objectionable to give one part of the State increased political power over another, by reason of its wealth, as it would be to give the inhabi-

tants of the same county unequal portions of political power in consequence of the disparity of their fortunes. On turning his mind to what would be an equal concession by the rival parties, he called to his recollection what had been affirmed by distinguished gentlemen in the past debate, (Mr. Giles and Mr. P. P. Barbour.) By those gentlemen the right of the majority, to give the direction of the Government, was defended: they then only contended, that the rights of the minority ought to be respected in all just Governments, and that a sufficient portion of political power ought to be exercised by the minority, to stay the action of the majority, when not directed by the interest of all—A rule so just in itself, so salutary in practice, readily met with his assent: he was desirous of carrying it into effect by restrictions on the Legislative powers of the Government. He had supposed, that restraining clauses would as amply protect property in all its various relations, as the freedom of religion; the freedom of the press; and the great shield of civil liberty, the writ of habeas corpus; but so earnest, and so pervading seemed the fears of the Eastern gentlemen, that he had at length come to the conclusion of giving them security on their own principles of controuling power by power. Upon this hypothesis, he had consented to give in connection with the House of Delegates flowing from white population, a Senate based on Federal numbers. In doing so, he had satisfied himself that the fears of the East, whether real or imaginary, must be buried in a branch of the Government flowing in an eminent degree directly from themselves, charged with their peculiar interests and safety, and immediately responsible to Eastern constituents. This principle of security and of compromise had the further recommendation of calling into existence the Legislative part of the Government from two rival elements. To the people it gave the popular branch; to the slave-holders it gave the supervising and controuling body—it equally denied the powers of the Government to numbers alone, or to the wealth of the country in the hands of its holders. Although it was objected with much force, that this compromise of interests would enable the minority, to paralyze the will of the majority, yet, it was unquestionably more in unison with the equal rights of all, that the action of the majority should be stayed, when the consent of the minority should be denied, than commit the Government to a minority of the people, with the power of applying its action to all persons, and all things, regardless of the interests, the feelings, or the wishes of the majority.

If protection is really the object of Eastern gentlemen, they will not hesitate to accept a Senate so formed—its members returning to Eastern constituents, will possess their confidence in the degree in which Eastern interests have been the objects of their care. The influence claimed for the slave property will be doubled in this branch of the Legislature—one hundred thousand white persons of the East, with their political influence increased in the Senate, by three-fifths of the slaves, may reject bills which unite in their favour three hundred thousand of the white population of the West.

Should this division of the power of Legislation be rejected, can the people of Lower Virginia suppose—can the world believe, that the protection of property has been the object sought for here? Will not the disguise be thrown off? Will not this question shew the most determined effort ever made in the American States, to render the *many* the vassals of the *few*?

For the safety of the State he hoped this lust of power would be abandoned, and a spirit of compromise and conciliation really adopted—a compromise, which giving to one branch of the Legislature, the principles contended for on one side, embodies in the other, the elements attempted to be infused throughout.

To this spirit of compromise, he yielded his full assent, not because the safety of any part of the country required it—not because the just principles of Representative Government demanded it; but as the price of concord, harmony, and the future tranquillity of the State.

Beyond this, he could not go; other or further sacrifices of the just rights of his constituents he could not make. If it should be the pleasure of gentlemen to force upon them the cruel and galling yoke with which they were threatened, he took leave to assure them, that the polls would show its indignant rejection.

If the rights of the Western people are now to be denied to them, he would do no act to bar their future claims to an equal participation in the Government. He had fully weighed the subject, and was prepared to await the growing influence of wealth, numbers, and intelligence in the West, and a returning sense of justice and equality in the East, rather than take a Constitution affording but a meagre and inadequate relief, and which might hereafter be holden to release all that is not now obtained. He begged gentlemen to consider, that a majority in Convention represented a minority of the people, and how extremely idle and futile it must be, to offer a Constitution for acceptance, which could not be received by those who are seeking reform without placing themselves in colonial inferiority, if not in a state of vassalage: How vain it was for a Government like ours, to offer, on the demand of reform, less than the people would accept. They will not be appeased by such an illu-

sory answer to their claims, they will but reiterate their demands in language which must be heard and cannot be disobeyed.

He asked, if the protection now offered in the Senate should be refused, will not even the people of Eastern Virginia perceive that it is the lust of power, and not the protection of property, for which the rights of their fellow-citizens of the West have been sacrificed. Such discovery, he thought, must unquestionably follow the present artificial and groundless excitement, and bring with it that calm sense of justice, which will secure to the people of every part of the Commonwealth, their equal and unalienable rights.

If, however, these anticipations should not be realized, and the cold-hearted and cruel policy should prevail, which holds the Western Virginians unsafe depositories of equal portions of the political power of the Commonwealth, they may, and I trust, will submit as men who know their duties to their country, although they may feel most sensibly its injustice.

He said, it had been the pride of the men of the mountains to witness the metropolitan honors of the lowlands. They have contributed freely from a common treasury to the enlargement and embellishment of the Eastern towns—for all the public works of the East, they have voted freely—they have regarded the genius and talents of Eastern men, as shedding equal glory and renown on every part of the Commonwealth. But what must be their future feelings, under the deprivations of political rights with which they are now threatened!

He begged gentlemen to pause before they severed those cords of affection, which had so long and so strongly bound the people of the West to those of the East.

Mr. Scott now moved that the present subject be laid upon the table.

Mr. Doddridge enquired for the reasons in favour of such a measure.

Mr. Scott replied, that no respectable majority could be obtained for the present plan, and that such a majority could be obtained for that of Messrs. Gordon and Upshur's.

Mr. Powell remonstrated against so unprecedented a course, as that the avowed enemy of a proposition should lay it upon the table, for the sake of palming upon the consideration of the House, against the wishes of its friends, a proposition to which he was an open enemy.

Mr. Gordon said, he should vote in favour of Mr. Scott's motion. He should not change his vote upon the subject of the compromise. He thought the Convention had had experience enough to see that the discussion of this white basis could only have a tendency to protract its deliberations to no end. He should vote to lay it upon the table, and take up what was a practical scheme. He saw plainly that the present discussion would be interminable. If the Convention were to agree on any Constitution at all, the period allotted for that work by law, was very short. The subject had already been discussed for two months, and why should more time be wasted upon its discussion?

Mr. Doddridge said, he was now the more disposed to proceed. The gentleman from Albemarle is for laying this subject upon the table, and thus escaping any direct vote upon the question of a white basis in the House of Delegates. The ayes and noes would never be recorded, and the votes of members forever concealed. He demanded the ayes and noes on the present motion. They were ordered accordingly.

Mr. Mercer said, that if this motion should succeed, and the gentleman should call up the proposition of the gentleman from Frederick, (Mr. Cooke,) against the will of the mover, he should vote against that proposition.

Mr. Gordon disavowed all design of concealing from his constituents or from the world, any vote he should give, or any thought he entertained on the subjects before the Convention.

Mr. Doddridge said, that that gentleman was one of the last whom he should suspect of such a purpose, but such would nevertheless be the effect.

Mr. Scott said, in reply to Mr. Powell, that if the course was unprecedented, or unparliamentary, he had learned it from the example of the gentleman from Loudoun, (Mr. Mercer,) who had pursued such a course toward propositions which he had sought to consider against the wishes of all their friends, and had consumed two whole days in the attempt to force a vote upon them.

Mr. Mercer said, he wished the gentleman would be guided by his example in some other respects: as to this, he was in an error: what he (Mr. M.) had endeavoured to procure was not the vote on any one proposition against the will of its friends, but on two different propositions combined.

Mr. Leigh said, what his friend from Fauquier probably alluded to was the motion of Mr. Mercer to pass over the proposition of Mr. Upshur, when it had first been moved in Committee of the Whole; which motion was equivalent to laying it on the table.

Mr. Mercer replied, it was one thing to call up a proposition *with* the consent of its mover, and quite another to call it up *against* that consent. He had had the consent

of Mr. Upshur before he made his motion. He had called up the amendment of the gentleman from Goochland, (Mr. Pleasants,) out of compliment to that gentleman, whom he considered as prevented by motives of delicacy from making the motion himself. It was altogether from respect to the gentleman from Goochland he had done so, and because he thought the critical moment had arrived for its adoption.

Mr. Pleasants said, he could not doubt the gentleman had been actuated by the motives he now professed; but he had thought at the time that before the gentleman offered his (Mr. P's) amendment, he might have asked his consent: the more particularly as the gentleman had two or three days before in a private interview, taken great pains indeed to convince him it was impossible it could pass, and had told him that the Chief Justice himself would vote against it.

Mr. Mercer said, he had not asked the gentleman from Goochland, because he could not have given his consent to have his amendment moved by another without the same breach of delicacy as would have attended the motion, if made by himself. As to the fate of the resolution when the gentleman first moved it, he was not prepared to vote for it. He afterwards learned it might get forty-eight votes. He was afterwards informed by the Chief Justice himself, in the presence of the whole Convention, that he would vote for it. He had laboured hard to effect a compromise, and had devoted several days to that effect: if it should finally prove abortive, he should still look back upon those endeavours with heartfelt pleasure.

The question was now put on the motion of Mr. Scott to lay the first resolution of the Legislative Committee on the table, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—50.

Noes—Messrs. Anderson, Coffin, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart and Thompson—46.

Mr. Scott now moved to take up Mr. Cooke's amendment.

Mr. Mercer asked the ayes and noes on that motion, which were ordered accordingly.

Mr. Cooke said, if the amendment was taken up at this time, it would be utterly against his wishes.

Mr. Summers said, here was a proposition, which had been offered at first in Convention, and by them had been referred to the Committee of the Whole; had not been considered by that Committee, nor reported by them to the House, and while on the other hand there was a proposition which had been referred to the same Committee of the Whole: *had* been considered there; had been reported with an amendment to the House; and which on every ground of fairness ought first to claim the notice of the Convention, and yet the former was now to be forced upon the House, contrary to the avowed wish of its mover, and of all its friends. Why was this? What had brought this bantling of the West into such great and such sudden favour with its worst and bitterest foes? Why did they seize upon it and compel the Convention to take it up? Why was it thrust on those who were desirous to reject it? Could the gentlemen suppose that any votes were to be gained or lost by taking it up now? He trusted it would be left to slumber in quiet in the arms of its parent.

Mr. Leigh said, he could very readily answer the gentleman's enquiry why this bantling was now to be brought forth: the purpose was this: that it might be killed.

Mr. Scott denied the imputation of unfairness. Though this bantling had not been taken up in Committee of the Whole, its twin brother had been, and voted down. If the gentlemen wished to amend this, the field was open. Where was the unfairness?

The question on considering, at this time, the proposition of Mr. Cooke was then put, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, and Perrin—46.

Noes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Venable, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Bayly and Upshur—50.

So the House refused to take up Mr. Cooke's amendment.

Mr. Scott now offered to take up the proposition of Mr. Upshur as amended which was agreed to.

It was then read as follows:

"1. *Resolved*, That the representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators west of the Blue Ridge of Mountains, and nineteen east of those Mountains. There shall be in the House of Delegates, one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district west of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of Tide-water, and thirty-four thence below.

"2. *Resolved*, That the Legislature shall re-arrange the representation in both Houses of the General Assembly, once in every _____ years, upon a fair average of the following ratios, to wit:

"First, of white population:

"Second, of Federal numbers:

"*Provided*, That the number of the House of Delegates shall never exceed _____, nor the number of the Senate, _____."

Mr. Powell now moved as an amendment, that all after the word "*Resolved*," be stricken out, and the following be inserted in lieu thereof, viz: "That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively."

Mr. Powell said, his object was to give an opportunity for recording the vote on that proposition distinctly, and he therefore demanded the ayes and noes. They were ordered by the House.

Mr. Gordon said, that while his opinions remained unchanged as to the principle on which representation ought to be based, yet his own proposition had been offered as a compromise, and he was reluctantly compelled, since gentlemen would force a vote on the present question in its naked form, to vote against it and in favour of his own: though if at liberty to follow his own feelings and wishes, he should certainly vote for a white basis alone.

The ayes and noes were then called and recorded as follows:

Ayes—Messrs. Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart and Thompson—46.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—50.

So the amendment of Mr. Powell was rejected, (and the question of the white basis settled by a distinct vote in the negative.)

The question now recurring on the proposition of Messrs. Gordon and Upshur,

Mr. Gordon moved, that the two parts of the proposition be divided, and the question first put on the first portion of it: it was so divided accordingly, and the question being first put on agreeing to the following:

"*Resolved*, That the representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators west of the Blue Ridge of Mountains, and nineteen east of those Mountains.

"There shall be in the House of Delegates, one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district west of the Alleghany Mountain; twenty-four from the Valley between the Alleghany and Blue Ridge; and forty from the Blue Ridge to the head of Tide-water; and thirty-four thence below."

It was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upslur and Perrin.—50.

Noes—Messrs. Anderson, Coffin, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Matthews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart and Thompson—46.

The question was then put on the following :

"*Resolved*, That the Legislature shall re-arrange the representation in both Houses of the General Assembly, once in every years, upon a fair average of the following ratios, to wit :

"First, white population :

"Second, Federal numbers :

"*Provided*, That the number of the House of Delegates shall never exceed , nor the number of the Senate, ."

Mr. Leigh said, he should vote against the scheme with the view of substituting another plan to equalize the representation, should the increase of population be such as to justify it. He should propose some change in the numbers and proportions of the representation from the several divisions of the State. His scheme was bottomed on principles which he could not give up ; but he again assured gentlemen that he should be in a great degree regardless of the details.

Mr. Leigh then presented to the House the following, which he accompanied with explanatory remarks that would be unintelligible if reported separately.

"That the House of Delegates shall consist of one hundred and thirty-nine members, and the representation therein shall be apportioned as follows :

"The twenty-six counties lying west of the Alleghany, shall have thirty-two Delegates.

"The fourteen counties lying between the Alleghany and Blue Ridge, shall have twenty-four Delegates.

"The twenty-nine counties lying east of the Blue Ridge and above Tide-water, shall have forty-five Delegates.

"And the thirty-six counties and four towns lying on Tide-water, shall have thirty-eight Delegates.

"No more new counties shall ever be formed of the country lying east of the Blue Ridge ; but the Legislature may in its discretion, from time to time, a majority of the whole number of both Houses concurring, whensoever the increase of the population of the country west of the Blue Ridge, and the more convenient administration of justice and police shall require, form new counties not exceeding ten, out of the territory lying west of the Blue Ridge ; and whenever such new county shall be formed, an additional Delegate shall be allowed to the country west of the Blue Ridge.

"And the Legislature having respect to the relative state of population of the respective counties, cities, towns, and election districts, and a majority of the whole number of both Houses concurring, may, at any time, allow one additional Delegate to any county, city, town, or election district, now existing, or to be formed, and to which only one Delegate shall in the first instance be allowed ; so that not more than two Delegates shall ever be allowed to any county, city, or election district ; and so that the number of the House of Delegates shall never exceed one hundred and sixty members."

6 Counties, 2 each, } 20 do. 1 each, }			32	4 Counties, 1 each, } 10 do. 2 each, }			24
Brooke,	-	-	1	Alleghany,	-	-	1
Cabell,	-	-	1	Bath,	-	-	1
Giles,	-	-	1	Berkeley,	-	-	2
Grayson,	-	-	1	Hampshire,	-	-	2
Greenbrier,	-	-	1	Hardy,	-	-	2
Harrison,	-	-	2	Morgan,	-	-	1
Kanawha,	-	-	1	Pendleton,	-	-	1
Lee,	-	-	1	Rockbridge,	-	-	2
Lewis,	-	-	1	Augusta,	-	-	2
Logan,	-	-	1	Botetourt,	-	-	2
Mason,	-	-	1	Jefferson,	-	-	2
Monongalia,	-	-	2	Rockingham,	-	-	2
Monroe,	-	-	1	Frederick,	-	-	2
Montgomery,	-	-	2	Shenandoah,	-	-	2
Nicholas,	-	-	1				
Ohio,	-	-	2				24
Pocahontas,	-	-	1				
Preston,	-	-	1				
Randolph,	-	-	1				
Russell,	-	-	1				
Scott,	-	-	1				
Tazewell,	-	-	1				
Tyler,	-	-	1				
Washington,	-	-	2				
Wood,	-	-	1				
Wythe,	-	-	2				
			32				

13 Counties, 1 each, }	45	20 Counties, 3 Towns, 1 each,	
16 do. 2 each, }		5 Counties, 2 each,	
		11 Counties, and 1 Town, dis-	
		tricted for 5.	
Amelia, - - -	1	4	
Amherst, - - -	1	—	
Charlotte, - - -	2	40	
Cumberland, - - -	1		
Dinwiddie, - - -	2		
Fluvanna, - - -	1	Essex, - - -	1
Franklin, - - -	2	Fairfax, - - -	1
Goochland, - - -	1	Gloucester, - - -	1
Henry, - - -	1	Greensville, - - -	1
Louisa, - - -	2	Hanover, - - -	1
Lunenburg, - - -	1	Henrico, - - -	1
Madison, - - -	1	Isle of Wight, - - -	1
Nelson, - - -	1	King & Queen, - - -	1
Nottoway, - - -	1	King William, - - -	1
Orange, - - -	2	Nansemond, - - -	1
Patrick, - - -	1	New Kent, - - -	1
Powhatan, - - -	1	Northampton, - - -	1
Prince Edward, - - -	1	Northumberland, - - -	1
Albemarle, - - -	2	Princess Anne, - - -	1
Bedford, - - -	2	Prince George, - - -	1
Brunswick, - - -	2	Prince William, - - -	1
Buckingham, - - -	2	Spottsylvania, - - -	2
Campbell, - - -	2	Southampton, - - -	1
Culpeper, - - -	2	Stafford, - - -	1
Halifax, - - -	2	Surry, - - -	1
Mecklenburg, - - -	2	Sussex, - - -	1
Pittsylvania, - - -	2	Richmond City, - - -	1
Fauquier, - - -	2	Petersburg, - - -	1
Loudoun, - - -	2	Norfolk Borough, - - -	1
	—	Accomack, - - -	2
	45	Caroline, - - -	2
	38	Chesterfield, - - -	2
	—	Norfolk County, - - -	2
	83	Lancaster and Richmond, - - -	1
		Westmoreland and King George, - - -	1
		Middlesex and Matthews, - - -	1
		Elizabeth City, York, Warwick	
		and Williamsburg, - - -	1
		Charles City and James City, - - -	1
			38

Mr. Leigh said, he wished to bring this question up, not for adjustment: no: all hope of that was at an end: after the temper which had been exhibited, it was manifest that both sides were unwilling to agree upon any compromise. When a proposition in that character was offered to the gentlemen from the West, they rejected it, he was about to say, with disdain. He did not, of course, speak of the motives of gentlemen, but only of their course, though he thought this very unjust: but he should not enter into the question which appeared indeed to be interminable, and which if pressed to its extremes threatened to divide the State. Mr. L. said, that if sinking that question entirely, if it were possible to sink it, the proposition he now offered should be acceptable to the West, and they would go with him for the promotion of perpetual harmony by destroying forever the principle and cause of discord between them, he was prepared to abide by it. But if this should be rejected by them with unanimity, and they persisted in standing firm on what they called their strict rights, all motives for compromise would be gone, and sorry, heartily sorry was he to add, that every hope of real and substantial union with them would be gone too.

Earnest, zealous and sincere as they were, they might rest assured that with equal honesty, sincerity and perseverance he, for one, should adhere to what he regarded as essential to the existence of the country: For, property was necessary to existence. To live as a freeman was indeed a great good: but in order to live in freedom, it was necessary to live; and in order to live, it was necessary to have property, and to have it at a man's own disposal. He cared not whether they were few or many, whether it was a monarch or his fellow-citizens, he was equally unwilling that any should have the disposal of his property. He was anxious, most anxious, if possible, to sink the question forever. He offered what in his own judgment, (he was going to say

his impartial judgment, but he could not know it to be so) would more contribute to their interest in all respects, than any that had yet been presented to them. It was because he thought so, that he was induced to offer it. He had done his best to shake off the influence of prejudice and of passion, though he knew it to be impossible to do this entirely. He offered this as a compromise. Its merit would be gone if it failed of that end, and all that could possibly recommend it to the acceptance of gentlemen from the south-east part of the State, would be gone too.

After some conversation as to the proper course to be pursued :

Mr. Upshur moved to lay his amendment for the present upon the table. He said he had offered it as a compromise, and as likely in its practical operation to be beneficial to the Western interest ; and it was possible it might yet be accepted by them. It was not at once to be taken for granted, that the proposition of the gentleman from Chesterfield would be preferred to it. As an Eastern Delegate he should prefer his, or indeed any of those which had been offered to his own : but he was afraid the other might not be adopted, and none other be substituted, and then the State would be left without any scheme of future apportionment at all ; a result he deprecated. It was not probable the West would be satisfied with any Constitution, which deprived them of the benefits of their growth and improvement. Should the question on his amendment be pressed now, he should himself vote against it, but he preferred laying it on the table in reserve.

Mr. Gordon pressed for a vote on the amendment.

Mr. Doddridge said, that so far as it depended on him, and in this he spoke the mind of all the Western members, he never could consent to accept of that scheme.

Mr. Cooke said, that if the House would agree to end here the discussion which had lately engrossed it, he should offer as a substitute for the amendment of Mr. Upshur, the following :

“Resolved, That it shall be the duty of the Legislature to cause an assessment to be made in the year 1839, or 1840, of all the lands within the Commonwealth subject to taxation ; and, as soon as may be after the year 1840, to re-apportion, throughout the Commonwealth, the representation of the people in both of the Legislative bodies.”

Mr. Cooke said, the principle of this measure was very simple ; and if the House should view it as a fair and honorable compromise, he should have no objection to leave the future re-apportionment to the Legislature.

Mr. Upshur said, that as the opinions of the West had, he presumed, been correctly stated by the gentleman from Brooke, he would now heartily concur in voting his amendment out of the House.

The question was then taken by ayes and noes ; when it appeared that Mr. Madison alone voted in the affirmative.

So the amendment of Mr. Upshur was rejected.

The printing of Messrs. Leigh's and Cooke's propositions having been ordered, the House adjourned.

SATURDAY, DECEMBER 19, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Hoerner of the Roman Catholic Church.

The question which came up in order from yesterday, was on the adoption of Mr. Upshur's resolution as amended by Mr. Gordon—(in substance, the plan of Mr. Gordon, nothing of Mr. Upshur's being retained but the word “Resolved;”) but the House not being yet full, it was suspended for the present : and the Convention proceeded to the consideration of the sixth resolution of the Legislative Committee, which is in the words following, viz :

“Resolved, That no person ought to be elected a member of the Senate of this State, who is not at least thirty years of age.”

Mr. Gordon moved to amend the resolution by striking out “thirty,” and inserting “twenty-five.”

On this motion, Mr. Chapman demanded the ayes and noes. They were ordered by the House, and being taken, stood as follows :

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Anderson, Harrison, Miller, Mason of Southampton, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Henderson, Osborne, Griggs, Mason of Frederick, Naylor, Donaldson, Campbell of Washington, Roane, Taylor of Caroline, Morris, Chapman, Oglesby, Morgan, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Saunders, Cabell, Stuart, Gordon and Bayly—45.

Nocs—Messrs. Barbour, (President,) Coffman, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Baxter, Trezvant, Madison, Stanard, Holladay, Mercer, Fitzhugh, Cooke, Powell, Boyd, Pendleton, George, M'Millan, Byars, Garnett, Cloyd, Mathews, Duncan, Laidley, Summers, See, Doddridge, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Claytor, Branch, Townes, Martin, Pleasants, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—51.

So the amendment was rejected. And the resolution as reported was agreed to.

The House next took up the seventh resolution which is in the following words:

Resolved, That no person ought to be elected a member of the House of Delegates of this State, who is not at least twenty-five years of age."

The question being put without debate, the resolution was agreed to.—Ayes 55.

The House being now full, on motion of Mr. Fitzhugh, the Convention returned to the "all absorbing question" of the *basis of Representation*: and the question being substantially on the following plan, (moved by Mr. Gordon as an amendment to Mr. Upshur's by way of substitute), viz:

Resolved, That the Representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators West of the Blue Ridge of mountains, and nineteen East of those mountains.

"There shall be in the House of Delegates, one hundred and twenty-seven members, of whom, twenty-nine shall be elected from the district West of the Alleghany mountain; twenty-four from the Valley between the Alleghany and Blue Ridge; and forty from the Blue Ridge to the head of tide-water, and thirty-four thence below."

A question of order arose as to the proper course to be pursued, in order to get at the consideration of the proposition offered yesterday by Mr. Leigh. It could not be moved as an amendment to the proposition of Mr. Gordon by way of substitute, because Mr. Gordon's amendment had yesterday been agreed to by the House and could not be stricken out without a vote to reconsider. It could not be added to Mr. Gordon's amendment, because it was inconsistent with it, and contained a different plan. And it could not be taken up and considered as an original substantive proposition, because a rule of order adopted by the Convention required all such propositions to go first to a Committee and be reported on.

After some conversation had taken place, and Mr. Stanard had moved to lay the proposition of Mr. Gordon on the table, with a view to rescind the rule above referred to, and thus to arrive at the discussion of Mr. Leigh's proposition:

Mr. Doddridge said, he was at a loss to conceive how the friends of Mr. Gordon's plan could consent to lay it on the table with a view to consider that of Mr. Leigh, which was obviously more hostile to their views. He then went into a comparison of the operation of the two propositions upon Western interests and came to this conclusion, that while the plan of Mr. Gordon secured to Eastern Virginia a majority of twenty-one, that of Mr. Leigh gave them a majority of twenty-seven. The first he considered a great inroad on the rights of the Western portion of the State; but the latter was a still greater.

Mr. GORDON addressed the Committee as follows:

Mr. President,—I greatly regret the excitement, either of expression or manner, apparent in this debate. I shall endeavour to avoid either, in what I may say. The proposition I submitted for the consideration of the Convention, was made in the hope of sinking the *discussion* on the basis of *future* apportionment of Representation. My own opinion was, and is, that the white population, gave a fair criterion for a just arrangement of power among the several parts of the Commonwealth. We have, however, found the Convention equally divided in opinion; each positive and pertinacious, in opposing any plan of Representation founded in the views of the other. This discussion had greatly agitated our councils, distracted our deliberations, and disturbed the quiet of the country. We had nothing to hope from prolonging it: nor can there now be any other purpose in continuing it, unless to rupture the Convention and send us home to a distracted and dissatisfied community, divided by a geographical line, into two great hostile parties. Sir, it was in the hope of healing these divisions, that I ventured to propose to this Convention a plan for the *present* division of Representative power in the State.

I thought long and anxiously on the subject. I made various calculations on the condition of the Commonwealth, drawn from statistics within my reach. Sir, the proposition which I have submitted, was not *guess work*; much less was it a *scheme* to give to one part of the Commonwealth a disproportionate and unjust power over the rights and interests of any other. It was proposed in a spirit of conciliation and compromise, violating no principle deemed correct by myself, and those with whom I had thought and acted; and, above all, in strict regard to what I considered just to every part of the State.

I found by calculations on the Census of 1820, the only authentic document of population within our power, that the present apportionment of Representation in the House of Delegates was greatly unequal throughout the State, and among its several parts: That in a House of Delegates of two hundred and fourteen members, the twenty-six counties West of the Alleghany mountains, composing the first Western district, had fifty-two delegates, when, by the white numbers of 1820, they were entitled to only forty-seven: That the section of the State, below tide-water, with thirty-six counties and four towns, had seventy-six delegates, whilst they were entitled to but fifty-nine: That the Valley or second Western district, with fourteen counties and twenty-eight delegates, was entitled to forty-two, and that the middle country from which I come, with twenty-nine counties, had fifty-eight delegates, and was entitled to sixty-six: That the two last mentioned sub-divisions of the State, the Valley and middle sections, had a majority of seven thousand, seven hundred and forty-two white population, of twenty-two thousand, five hundred and sixty-two slaves, and paid of the taxes of 1828, \$17,926 more than the other two, or the extreme West and Eastern divisions: That these two central contiguous districts of country, containing a majority of whites, a majority of slaves, and paying greatly more than half the revenue of the State, had a vote in the House of Delegates, as eighty-six is to two hundred and fourteen. Sir, the glaring inequality of Representation, has not, and cannot be met by any argument, and challenges universal assent to its injustice. Do gentlemen suppose that I, as one of the Representatives from one of the largest and most populous districts in Virginia, both as to white and Federal numbers, was insensible of its true interests, or was disposed to abandon them? I assure gentlemen the proposition I have submitted for their consideration, was not a leap in the dark. My first proposal was to reduce the House of Delegates to one hundred and twenty, (I added seven members to satisfy the wishes of some of the Convention.) I made various estimates on the different propositions for apportionment, suggested to the Convention by others, or that presented themselves to my own mind. I found that if taxation alone was the basis of Representation in a House of one hundred and twenty members, the twenty-nine counties composing the first Western district, would have eleven and a half. The second Western or Valley district, seventeen and a half. The first Eastern or Middle district, forty-six and a half. The second Eastern or Lower district, forty-four and a half. If the Federal number, the first district, twenty; the second, nineteen; the third, forty-three and a half; and the fourth, thirty-seven and a half. If the combined ratio of numbers and taxation, the first district, nineteen; the second, twenty and three-quarters; the third, forty-two; the fourth, thirty-eight and a quarter members. On the Federal numbers of the Auditor's estimate of the present population, the first district would have twenty-four; the second, twenty-one; the third, forty-four; and the fourth, thirty-eight members. Sir, I made other estimates from the Auditor's statement of the taxes of 1828. Dividing the whole amount of taxes or revenue, by the whole number of delegates in our present House of Delegates, I found that if all parts of the State paid equally, the average for each member, should be \$1,872. I then made a comparative estimate of the taxation and Representation of each section of the State—I found that the first Western section paid \$751 per member; the second Western or Valley District, paid \$2,233 per member; the third or middle district, \$2,530, and the fourth or second Eastern district, paid \$1,634 per member. Sir, I give these estimates in no spirit of reproach to that Western district, for the small contributions to the Treasury, in proportion to their actual Representative power in the Government, but to admonish gentlemen who complain that my proposition does injustice to their country, that they should not forget, that in Committee of the Whole, forty members of this Convention rose in favour of a proposition to base Representation on taxation alone. Sir, when it is conceded on all hands, that without a spirit of temperance and moderation, no good can result from our deliberations, I ask what injustice my proposition can do to the West? On the contrary, is it not fair and liberal? It gives to the whole country West of the Blue Ridge, within a very few members of what it would be entitled to upon the present uncertain estimate of the Auditor of the white population of the State; and it gives to the Valley *all*, all it claims for the present on any scheme of Representation, and to the Trans-Alleghany country, three more than it would be entitled to by the Census of 1820, on white population alone. Sir, is not this a fair and liberal estimate for the West? Does it not give all that it may fairly claim for the present? What do gentlemen ask: that we should give a rule of *future* apportionments: without fixing the Representation for the present? Can our brethren of the West think it would be right or reasonable in us of the East, who represent a country containing nearly half a million of bondsmen, whilst they have, comparatively but few, to return to our constituents the *masters* of these slaves, without being able to tell them what will be the actual state of their Representation in the Legislature? What will be the actual and relative power of each section of the State in regard to this great and delicate interest? Sir, the people of Virginia would ratify no Constitution, looking to a pro-

spective Census, which did not fix the *present* Representation of its respective districts. The very anxious suspense and uncertainty on that subject, after the agitations which have been excited here and elsewhere, would make them reject any Constitution you can propose, and content them to live under the present Constitution, unequal as the distribution of power under it, undoubtedly is. Sir, when I first presented my plan of Representation, I thought it would be acceptable to the West, because, I was sure, it did them ample justice, and was not subject to be criticised, from containing in its principles any element peculiarly objectionable to them. In presenting it I looked to the rights and interests of the whole State—acknowledging as I always do, my peculiar obligations and duties to my immediate constituents. I feel and have felt that their interests will on this occasion be best subserved by looking with an enlarged view to the rights and interests of the whole, rather than to a perpetuation of sectional strife, in which they, nor any who love their country, can take delight. With these views, the proposition was submitted and has been sustained. The first proposition was the result of an estimate of the white population of 1820—modified from one hundred and twenty members to one hundred and twenty-seven, to accommodate the views and to endeavour to *sink* the *debate* on that vexed question. Sir, one great objection I always had to bringing this Federal number or mixed basis under discussion, was an anticipation of the heat and unhappiness it would engender; and a strong objection to fixing it in the Constitution, was, that it would be an element of fiction; a seed of discord; fatal to the permanence of the Constitution. If you do put it in the Constitution, cannot the non-slave-holding part of the State, excite you on this subject whenever they may have a purpose to answer by it—and you may have a Missouri question, of perpetual recurrence in the heart of your institutions. Sir, no Constitution you can form, situated as Virginia is, can endure with such a provision in it.

The non-freeholders and non-slave-owners, who are excluded from the Right of Suffrage, will be the lever to wrench your institutions from such foundations—they will not be insensible to the appeal, that this fair domain of Virginia, was conquered by their fathers in many a battle bravely won—that they established a republican form of Government, leaving its administration in the hands of the freeholders—that after fifty-four years of possession of this exclusive power, they delegated their men of age and wisdom, who met in council to liberalize their institutions and fix the foundations of future Government, but that such had been the influence of long submission to unequal power, that they not only refused to extend the Right of Suffrage to the free-men of the country, but they infused a new element of power—they made their slaves the basis, in part, of representation, whilst those who guard them in their subjugation, are denied a voice in their councils and in elections. Sir, I will not pursue this subject, but ask gentlemen to reflect. Can a Government so based, be permanent? Will it not contain within itself the fatal germ of its own destruction, after years of strife and confusion? Sir, is it wise in a slave-holding community to keep up this discussion? If we do not put this ingredient in our cup, may we not fairly appeal to the just sympathies of our Western brethren? Not from any apprehension of danger personal to ourselves. Those who have commanded slaves, can never become so themselves; the spirit of command endures through life. But when they reflect that we are hereditary masters of men born in slavery; that our condition is unalterable at present; that theirs is every day more and more assimilated to ours; that their interests and ours equally combine to allay this excitement and look to Virginia as one great united Commonwealth, I am sure the appeal will not be in vain. Sir, we ought to meet on this middle ground of the Census of 1820, notwithstanding the West sets up a higher claim. But, Sir, whatever may be the result, I shall have the consolation to reflect, that I have discovered no narrow selfishness in the plan I have submitted, as my own gives to that portion of the Commonwealth from which I come, a just, but smaller portion of power than has been offered by others, and that true to my principles and my country, I have made an honest effort to advance her peace and honor. I hope the Convention will give to the proposition of the gentleman from Chesterfield, a candid consideration. I am not vain enough to believe I have proposed a perfect plan, but think it better calculated to combine a majority of the Convention than any other.

Mr. Massie made an explanation as to his course in voting for Mr. Gordon's amendment yesterday, which he understood to be referred to in some of the remarks of Mr. Doddridge. He had voted against the amendment of the gentleman from Frederick, (Mr. Powell,) because it directly presented the first resolution of the Legislative Committee, which had been previously laid upon the table by a vote of the Convention, in which he concurred, for the purpose of taking up the subject of compromise. It was now certain that no basis of Representation could be agreed on by any majority respectable in point of number, and the proposition in question was not so great a departure from the principle contended for here, as the scheme proposed of a white basis in the House of Delegates, and a Federal basis in the Senate. His constituents had a deep interest in the compromise of this agitating controversy, lying as they did, be-

tween the conflicting parties; and he had voted in the spirit of compromise and in none other.

Mr. Johnson was in favour of laying the present proposition upon the table, in order that that of Mr. Leigh might be fairly considered. As to the rule which stood in the way, it had been adopted at his motion, had now done all he intended it to do, and might be dispensed with.

The proposition of Mr. Gordon was then laid upon the table for the present.

The rule requiring every original proposition offered in Convention to be referred to a Committee and reported upon, was then, after some opposition from Mr. Mercer, rescinded.

Mr. Leigh's proposition was then read from the Chair, as follows:

"That the House of Delegates shall consist of one hundred and thirty-nine members, and the representation therein shall be apportioned as follows:

"The twenty-six counties lying West of the Alleghany, shall have thirty-two Delegates.

"The fourteen counties lying between the Alleghany and Blue Ridge, shall have twenty-four Delegates.

"The twenty-nine counties lying East of the Blue Ridge and above Tide-water, shall have forty-five Delegates.

"And the thirty-six counties and four towns lying on tide-water, shall have thirty-eight Delegates.

"No more new counties shall ever be formed of the country lying East of the Blue Ridge; but the Legislature may in its discretion, from time to time, a majority of the whole number of both Houses concurring, whenever the increase of the population of the country West of the Blue Ridge, and the more convenient administration of justice and police shall require, form new counties not exceeding ten, out of the territory lying West of the Blue Ridge; and whenever such new county shall be formed, an additional Delegate shall be allowed to the country West of the Blue Ridge.

"And the Legislature having respect to the relative state of population of the respective counties, cities, towns, and election districts, and a majority of the whole number of both Houses concurring, may, at any time, allow one additional Delegate to any county, city, town, or election district, now existing, or to be formed, and to which only one Delegate shall in the first instance be allowed; so that not more than two Delegates shall ever be allowed to any county, city, or election district; and so that the number of the House of Delegates shall never exceed one hundred and sixty members."

MR. LEIGH then rose in explanation and defence of his proposition. He premised, in the outset, that all he was now solicitous about, was the principle of the plan, without insisting on its details, or attempting to present, with exact precision, all the results to which it would lead: he only meant to shew its *modus operandi*—how it would work generally. He repeated, (what he had declared when he first offered it,) his entire and perfect indifference as to the details, so far as they might affect his own district.

He assured the Convention, that he never went to any work, with more reluctance in his life, than to that of tendering this plan of compromise, in his own person. No consideration, short of the absolute necessity of the case, should have induced him to do it. If any other gentleman, holding his opinions, would have undertaken to prepare and present this, or any similar plan, the House should not have heard one word from him: he would have been well content to give it only his silent support. He knew, perfectly well, that there was a portion of the members of the Convention, who, without indulging any personal hostility or ill will towards him, felt, nevertheless, an extreme jealousy of any propositions *he* might offer, merely for being presented by him. Some, because they asserted an exclusive claim to republicanism, and thought it necessary to suppose, that his mind was possessed with anti-republican principles; others, from a belief that he was actuated by a strong jealousy of Western interests—but, from whatever cause, he knew that such a prejudice did exist, just as well as if gentlemen had avowed it to him: he only desired to look into a man's face, to know how he felt affected towards him, and measures coming from him. He would have avoided incurring this obstacle to the success of his present proposal, if it had been in his power, to the end that it might get fair play, and stand or fall by its own merits alone; but that being impracticable, he had offered it, to take its fate. He should now, as briefly as he could, explain it to the House.

Nothing had filled him with more surprise, than to find, that gentlemen of the *Valley* should prefer the plan of the gentleman from Albemarle, (Mr. Gordon,) to that he now offered. He said, gentlemen of the Valley: because, after the speech which the House had heard yesterday, (Mr. Summers's,) and this morning, (Mr. Doddridge's,) he saw that there was a feeling in the Trans-Alleghany country, which, he should think, gentlemen from the Valley would be quite as much alarmed at, as gentlemen from Eastern Virginia: but that was a question for them, and not for him to judge of.

The substantial difference between his plan, and that of the gentleman from Albemarle, lay in two points only : first, there was a slight difference in the proportions of representation assigned to the four great divisions of the State respectively—(he should not speak of the slight difference as to the whole number of the House of Delegates;) and secondly, that the gentleman's proposition contained within it, no provision for settling this vexed controversy hereafter; though it did, (what alone it professed to do,) provide for settling that controversy for the present. The gentleman, out of a House of Delegates consisting of one hundred and twenty-seven members, assigned to the West very nearly the exact proportion to which it would be entitled on the principle of the *white basis*, (so called,) according to the Census of 1820 : probably not varying as to the number of representatives, more than a unit, in either of the four divisions of the Commonwealth. Now, this near approach to "the principles of justice," (as the gentleman from Brooke, (Mr. Doddridge,) always called them—assuming that all other principles but his own, are unjust and oppressive,) was his principal objection to that arrangement. The gentleman from Albemarle was, he knew, of the same opinion with the gentleman from Brooke, as to the justice of the principles of the *white basis* : he had avowed that opinion. Mr. L. was not now going into that question : but he was going to discuss this question, viz : what is the best practicable mode, (if any mode be practicable,) to sink that controversy forever? If he could shew the gentleman from Albemarle, that his (Mr. L's) plan was more likely to accomplish this object than his own, he hoped, from that gentleman's candour, that he should have his support.

He concurred entirely with that gentleman in the opinion, and in the feeling he had expressed on that subject : sound policy required of every statesman to sink that distracting controversy then and forever. And he was greatly mistaken if there was a gentleman in the House, who would not acknowledge that the very agitation of it had not, already, of itself, produced a greater amount of evil, than could be compensated by any possible good, which any conceivable amendment of the Constitution which this Convention could make would ever produce.

Supposing the proposition of the gentleman from Albemarle to be adopted, its distribution of representation, as between the four great divisions of the State, was to be unchangeable, fixed, permanent. Could that gentleman suppose, that he sank the controversy in question by that provision? Could he expect that those who were so extremely anxious for the establishment of what they considered as the only true republican basis of Government, would make no effort to get a new Convention for the purpose of establishing such a basis? If the gentleman hoped this, he must be far more sanguine than he was. Or did he hope, that any Constitution, in any conceivable shape, would not, in its actual operation, engender discontents, which those gentlemen could use as an instrument to effect a new Convention? Could he imagine, that any Constitution could be devised by this Convention, or by the wit of man, that would exempt this community from evils, and sore evils too? If the gentleman knew, as he must know, that every work of man was necessarily imperfect, he could not but own that many and great evils must exist under any possible form of Government, and that the question concerning the merit of every Government under the sun, was only this—whether the sum of good it produced was the greatest practicable, instead of the greatest desirable? Any Constitution that could be devised would cause some discontents, reasonable or unreasonable discontents, which might be inflamed at any time, when any great question of geographical and political interests was to be decided.

Mr. L. said he would be content to take the apportionment of the gentleman from Albemarle, if that gentleman could shew him that it *could* be fixed as a permanent rule of apportionment. His great objection to it was, that it could not be made so. All that it did, or could do, was to settle it for the *present*—for the present in that sense of the word, in which, while we are yet speaking, *present* has passed away. The rule would be overturned, the very moment the question could be submitted to the people, whether it should continue; instantly. Both sides would unite against it. It settled nothing : it left us just where we were. It left the great basis question to agitate the community, till all the community shall be *dissolved* between the disputants.

Mr. L. he now prophesied, that that struggle, if persisted in, would end in the dissolution of the Commonwealth. He went on this principle, established by long experience, that whenever men have a controversy on matters of *interest*, that continues for a long time, it is sure to end in a separation. He was for avoiding this, if it were possible to avoid it by fair and just means.

The gentleman from Frederick, (Mr. Cooke,) had presented a different proposition. He was for taking the proportions of representation, assigned by the plan of the gentleman from Albemarle, as a present arrangement, and providing for a new apportionment after the year 1840, to be entrusted entirely to Legislative discretion. He, Mr. L. had given this plan as full a consideration as the time would enable him. At the first view of it, he had been strongly disposed to give it his assent. As the

proposition of the gentleman from Albemarle gave to the cis-montane country a majority of twenty-one in the lower House, and six in the Senate, he had supposed that the future apportionment might be left with safety to a Legislature thus constituted. But, on farther reflection, he found that there was one reason operating so strongly against its adoption, he was compelled to reject it: that reason was, that it defeated the great end he had in view, which was to sink the controversy between East and West. For, supposing representation in both Houses to be distributed according to the proposition of the gentleman from Albemarle, and the prospect to be held out of a new apportionment in 1840, and no principle settled as a rule for that apportionment, it was only making provision for a party war to last as long as the siege of Troy, to be prosecuted for ten long years, with the utmost zeal and ability that could be furnished by both sides. He asked gentlemen if they did not feel and see this consequence? The moment such a plan should be submitted to the West, they would be told "yes, accept this for the present—for in ten years the Legislature will have '*come to a sense of justice*'—and we shall then have representation based upon the white population exclusively." The leaders of that party would keep that idea constantly before the minds of the people. And did they suppose, that the other party would remain perfectly silent? Did any one persuade himself, that if pamphlets and newspaper essays were resorted to and multiplied in the West, that essays and pamphlets would not be written in the East, with at least as much fluency and zeal, if not the same ability? [Looking toward Mr. Cooke.] For one, he promised gentlemen, that if God should spare his life, the question should be met with as much earnestness and diligence, on this side the mountains, as on the other—and if success depended on zeal, earnestness and sincerity, he thought he should stand as good a chance for success as any one—they had no more zealous advocate for their principles than *he* was for his, and should be (he believed) to the day of his death. Though (said he) I have changed many of my opinions since you, Sir, and I were together at college, I do not expect after arriving at my time of life to change them again.

Mr. L. again insisted, that the proposition of Mr. Cooke, was the proclamation of a Trojan war between the two great parties of the State. This was his objection to it: That war he wished to end now, and avert hereafter. But the proposition of the gentleman from Albemarle, renewed it at once—immediately; while that of the gentleman from Frederick, would keep it up, without decision, till 1840. What new feuds or flames might arise in that period of time, it was not for the wisdom of man to foreknow. The war had endured now since 1824; and who could be ignorant, that in the course of its prosecution, many who had once been bound by the strongest attachment, had become entirely alienated? Some, who reposed unbounded political confidence in each other, had found all bonds dissolved, and hostility planted, where nothing but peace and harmony once reigned. He knew this to be the fact; and it was impossible that others could be blind to it. His own temper was to fight as hard as he could, while the battle raged, and to forget all, as soon as it was over. Give him a short war, as hard as they pleased: only, in the name of Heaven, let it be short: and then, when peace comes, let it be sincere and hearty peace. He was for no ten years war. He preferred that the controversy should be decided at once, at the point of the bayonet, (the bayonet he referred to, was the vote of the people: votes were the only bayonets he hoped ever to see employed in this contest,) let it rather be decided at once, upon the question of accepting or rejecting the proposition of the gentleman from Albemarle. He had rather have that, than the plan of the gentleman from Frederick, with that ten years war to follow it. That of the gentleman from Albemarle, brought them first to the charge; and if they must come to it, the sooner the better, always.

As to the plan he had submitted, he said, he did not address himself to any who thought that the best way to reform was to begin by demolition; nor to any who thought there was a *best* in Government which applied to all mankind, in all times, places, and circumstances; nor to any who thought that they were bound to any certain set of abstract principles, as being the only republican principles which did or could exist, or who were of opinion, that the particular circumstances of Virginia ought not to be regarded. He spoke to those only who thought that they ought to suit our institutions to our condition. All those who thought that one who did not advocate the "white basis" could not be a republican, of course, thought him an aristocrat, and were ready to fix the name of *mad-dog* upon him accordingly; and to keep clear of all communication with him, for fear of a bite.

But, he asked the consideration of his proposition, upon its own merits alone. Let it be separated from its author, and judged by itself.

It was his opinion that in the trans-Alleghany country, there ought, in a short time, to be a farther division of counties, for the more convenient administration of justice and for the purposes of internal police. He was willing to give them a Republican Government in reality; so that the representative should be personally known by his constituents, and they by him, and that he might truly represent their views and

wants in the Legislature. He therefore provided for the erection of ten new counties to the west of the Ridge, which would reduce the majority on this side the mountains to seventeen. Did he do nothing else? Should the counties in the Valley increase in population and improvement, and the trans-Alleghany country also, to the extent of their own most sanguine hopes and calculations, or should they even attain to one-half of what was so confidently predicted, he had provided that the Legislature should have power to assign to any of them one additional representative, so that it should thenceforth have two. Or he had no objection to extend this to *three*, should the proportional increase of population require it, and their representation might be equalized as far as practicable; and in this case, he would allow one hundred and eighty, as the maximum number of the House of Delegates. The Legislature, having respect to population and increase, might increase the representation in all parts of the State. He had not confined this provision to the West only.

Let gentlemen from that portion of the State say what they pleased, so long as he looked at the face of the country, such as the hand of God had made it, he must ever be of opinion, that the greatest increase of Virginian population must take place in the middle country until it should become very dense; and then it would naturally seek the Tide-water country, where the waters teemed with subsistence for man. This, however, was looking forward to a remote period indeed. But the chief increase would, at all times, happen in the Valley and in the midland district. Mr. L. said, he had no objection, that that portion of the State should hold the balance of power. He told gentlemen from the West, that he hoped they might increase in population to the utmost extent of their desires; and he had accordingly provided to meet that growth by a proportionate increase of power. He was perfectly content with this. He had no objections in the world to their obtaining power in this way; because they would then be compelled to pay their share of the taxes of the Commonwealth: as soon as they were compelled to tax themselves as well as us, they might tax him and welcome. That was all he asked. That was all the safeguard he should ever require.

Mr. L. observed, in conclusion, that these views were perfectly plain and simple. Had such propositions come from Western members, he should have hailed them with the sincerest joy. And he was persuaded that nothing but the interminable contest about the "white basis" had prevented such an event. Yet he made no complaint on that subject: he uttered no censure on the course gentlemen had thought it right to pursue: they were certainly the best judges of their own course. He hoped he should not be left alone in the support of the scheme he had proposed; but that it would receive the countenance of those who possessed, in so large a degree, what he did not—he meant, weight of character.

MR. COOKE said, that the question under consideration was a question concerning the *relative* merits of the schemes for apportioning representation offered by the gentleman from Chesterfield, (Mr. Leigh), and the gentleman from Albemarle, (Gen. Gordon;) and the *positive* merits of the former. With the *positive* merits of the *latter* scheme, (said Mr. C.) we have at present nothing to do. I learn from the gentleman from Chesterfield, that his scheme is offered in the spirit of conciliation and compromise, and in that spirit I will frankly consider it.

And I beg that gentleman to be assured, that his schemes are not received by *me*, at least, with jealousy and distrust. For, however formidable his hostility to Western interests, it has certainly the merit of being open and manly. So far from considering his various propositions as having any thing covert or insidious in them, I am rather inclined to admire the *naivete* and frankness with which he uniformly proposes to the people of the West to surrender themselves, bound hand and foot, to those of the East. Such is, invariably, the distinctive and peculiar feature of his plans. No, Sir, I do assure him that I expect nothing insidious from *him*.

Let us briefly examine his *new* plan for organizing the Legislative bodies, and apportioning representation among the people of Virginia, in comparison with that of the gentleman from Albemarle. I heard him, I confess, with no small surprise, express his astonishment that any member from the *Valley* should prefer the scheme of the gentleman from Albemarle to that just offered by himself. I should suppose that a very slight examination of the two plans would have disclosed very obvious reasons for such a preference. In a House of Delegates, consisting of one hundred and twenty-seven, the gentleman from Albemarle offers to the Valley twenty-four members. In a House of one hundred and thirty-nine at least, the gentleman from Chesterfield allows to the Valley *but* twenty-four. He increases the numbers of the *House*, without increasing the number of the *Valley Delegates*. If the House of one hundred and twenty-seven, proposed by the gentleman from Albemarle were increased to one hundred and thirty-nine, his principle or rule of distribution would allow to the country west of the Ridge fifty-eight members, while the rival proposition of the gentleman from Chesterfield allows it but fifty-six. The three additional members which, out of his enlarged House of Delegates, he allows to the whole country west of the Blue Ridge of Mountains, are all bestowed on the trans-Alleghany country.

He swells the representation of that country beyond its due proportion, (on the basis of white population,) of the whole number allowed by his plan to the West; and of course robs the Valley of its just and equal share of the pittance which he bestows on the two united. Whereas the scheme of the gentleman from Albemarle divides what he allows to the West fairly between its two sections, according to the most correct estimate of the white population of the two districts at the present time. And yet the gentleman from Chesterfield is astonished that any member from the Valley should prefer the scheme of the gentleman from Albemarle to his!

Having thus disposed (said Mr. C.) of the *relative* merits of the two propositions, I will briefly consider the *positive* merits of that of the gentleman from Chesterfield, as a measure of conciliation, addressed to the calm good sense of the western people in general. He proposes a House of Delegates, consisting of one hundred and thirty-nine members, which may be augmented, at the discretion of the Legislature, to the number of one hundred and sixty. Now, *one* objection, which the people of Western Virginia, in common with their fellow-citizens of the East, would have to the plan in question, is, that it unnecessarily swells the whole number of Delegates, and thus increases the expenses of the Government, and consequently the burthen of taxation. But this objection is a trivial one, compared with others which stare us in the face, on the very presentation of his scheme.

He proposes a House of Delegates consisting of one hundred and thirty-nine members. He *authorises* the Legislature, at its *discretion*, to create, from time to time, ten additional Western counties, *requiring* it, should it exercise the power so given, to bestow on the "*country*" West of the Ridge ten additional members. He moreover authorises the Legislature, at its *discretion*, to increase the power by the addition of twenty-one members in all, so as to swell the total number to one hundred and sixty. And then twenty-one members may be given, at the *discretion* of the Legislature, to *any* twenty-one counties having each, according to his *first* distribution, but one representative. In other words, the Legislature may, or may not, at its *discretion*, create new counties in the West, and consequently may, or may not, as it pleases, give to the Western country *any* additional representation. And it may, if it chooses, at its very first session, add twenty-one members to the House of Delegates, and distribute them all among the small counties between the City of Richmond and the Capes of the Chesapeake. And the Legislature, invested with these extraordinary powers, is divided between the two great sections in the proportion of fifty-six to the West, and eighty-three to the East. An Eastern majority then, and the East enjoys under his scheme an overwhelming majority, may at any moment, at its uncontrolled will and pleasure, augment that majority to such a point that the *existing* inequality of representation, the great grievance of the West, is absolutely *justice* compared with that which he enables the Legislature to create. And this is a scheme of conciliation and compromise offered to the grave consideration of the sober-minded people of the West!

I concede to this scheme fair and honest purposes, and that is all that I *can* concede. I admit, that the proposed Legislature *may* add ten representatives to the Western division of the State, *if so disposed*. It *cannot* add *more* than ten out of the twenty-one additional members, no matter how liberal its views.

Now, Sir, I put it to the candour of the gentleman from Chesterfield to say, how far *such* a scheme of representation accords with his own views of human nature, and his own estimate of human motives and conduct. How often and how emphatically has he told us that selfishness is the great master-spring of human action. That no man of common sense, would put his property, or his interests, in the keeping or under the control of another, unless it was the *interest* of that other to discharge the trust to his advantage! If he be correct in his theory of human nature, and in his estimate of the motives which commonly actuate men, how *can* he expect the people of the West to accept of such a proposition? How *can* he expect that they will accept a scheme which *commences* with giving them a weight in the Legislative bodies far below that which they claim as their just and undoubted right, and believe to be their right, with a provision annexed, enabling their fellow-citizens in the East, whenever they shall think proper, at their arbitrary will and pleasure, to reduce the pittance of power at first granted to them, to absolute insignificance. How *can* he for a moment believe that the Western people will consent thus to *tempt* their fellow-citizens in the East to so gross an abuse of power?

Has he not told us, in the most pointed and emphatical manner, that the Constitutional provision, offered at the commencement of the session, by the people of the West, to those of the East, prohibiting the Legislature from imposing undue burthens of taxation on the slave-property of the Eastern people, was "a mere *paper* guarantee?" Has he not treated the idea of relying on *such* a guarantee with absolute contempt and derision? And does he *still* expect the people of the West to accept of a scheme, which contains not even the poor security of a *paper* guarantee, against an abuse of power utterly subversive of their interests and their rights. I am, I confess, Sir, utterly amazed at the haracter of this *compromise plan* for the security of Western rights. I hazard

nothing in saying that the Western members of this body would vote, to a man, against *any* Constitution containing a provision so odious, and that the universal voice of all the West would at once denounce it, were it to receive the sanction of this honourable body.

One word, Sir, in regard to the resolution which I yesterday laid on the table, *authorising* the Legislature, as organized and distributed by the scheme of the gentleman from Albemarle, to re-apportion in 1841, the Representation of the people of Virginia in the Legislative bodies. That was no scheme of mine, it was offered at the suggestion and request, of a respectable member of this body from the Trans-Alleghany country. He thought that even *such* a plan of re-apportionment would be better than none, and requested me to submit it to the consideration of this honorable body. It is not now under consideration, and I am little solicitous about its fate.

I do not believe, however, with the gentleman from Chesterfield, that such a provision would necessarily produce a ten years' war of faction, if the Constitution, to which it should be annexed, were accepted by the people of Virginia. I do not believe that such a state of things would immediately ensue under *any* Constitution, sufficiently equitable to unite in its favour a majority of the people. I believe, that under any such Constitution, the people would remain quiet, until provoked by injustice, or a gross neglect of their rights. If, under such a Constitution, or *any* Constitution, the Government should continue, as heretofore, to act like a step-mother to the Trans-Alleghany people, and little better to those of the Valley, the people of those regions would be, as they now are, clamorous for a redress of grievances—and not *until* then. I believe, that if under such a Constitution, the Government were to be administered liberally and fairly, with equal and exact justice to all the different sections of the Commonwealth, the people of Virginia are not made of such combustible stuff as to blaze out into factions, and run after change merely for the sake of change. Under such a Government, the ten years' war which he speaks of would turn out to be a mere figment of his lively imagination. I repeat, Sir, that as to the scheme of re-apportionment alluded to, but not now under consideration, I am not its sponsor.

The animadversions which I have made on the compromise scheme of the gentleman from Chesterfield, however plain and unvarnished, are made, not in the spirit of polemical debate, but with a direct view to a friendly compromise, if such can be made, of our conflicting pretensions, and with a view to convince him that the people of the West never will or *can* accept that which to him appears so well calculated to attract their favourable consideration.

The question being about to be put on Mr. Leigh's proposition, Mr. George demanded the ayes and noes, and they were ordered by the House.

Mr. Scott said, he did not see any good reason why no new counties were ever to be formed East of the Blue Ridge. He could not vote for the proposition in its present form, and wishing to give it his support, he moved as an amendment, to strike out the clause making that provision.

The motion was negatived—Ayes 23.

Mr. Stanard proposed to amend the proposition so as to allow to each county three Representatives when the increase of its population would render it proper.

Mr. Leigh accepted this as a modification.

But Mr. Henderson objecting, the question was taken on Mr. Stanard's amendment, and decided in the negative.

The question was then taken on Mr. Leigh's scheme, and decided by ayes and noes, as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Tazewell, Loyall, Prentiss, Griggsby, Coalter, Joyner and Bayly—30.

Noes—Messrs. Barbour, (President,) Marshall, Tyler, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Upshur and Perrin—66.

So the proposition of Mr. Leigh was rejected.

The question now recurring on Mr. Gordon's plan,

Mr. Doddridge offered the following amendment:

"After the next Census to be taken under the laws of the United States, and every ten years thereafter, there shall be a new apportionment of Representation, and a new

assessment of land-taxes—each apportionment of Representation shall be made in the following manner and on the following basis, viz: the number of free white inhabitants in the House of Delegates, and the Federal basis in the Senate.”

Mr. Powell moved to amend the amendment of Mr. Doddridge by striking therefrom the words “*after the next Census*,” and inserting in lieu thereof, “*after the year 1840*.”

Mr. Doddridge accepted this as a modification.

Mr. Thompson moved to insert “1850,” instead of “1840.”

Mr. DODDRIDGE then rose and addressed the Convention nearly as follows:

Mr. President,—I again submit, and perhaps for the last time, the proposition under consideration. The delegation of which I am part, cannot assure the House that their constituents will adopt a Constitution founded on it. We believe they will, if the other provisions are acceptable. This is all that we can say, and our consolation is, that they are not bound by our act unless they choose to adopt it.

I agree with the gentleman from Chesterfield, in most of the remarks with which he introduced his plan of apportionment just rejected. I agree with him, that should the proposition of the gentleman from Frederick, (Mr. Cooke,) be adopted with that of the gentleman from Albemarle, (Mr. Gordon,) the siege of Troy will soon commence. It will have begun as soon as we can see our constituents, and perhaps before. That war may be of longer continuance than the siege of Troy. It will certainly continue until it will have subdued the injustice proposed to be inflicted by those propositions.

The gentleman from Chesterfield supposes, that unless some rule for future apportionment shall be established, or some permanent regulation that will render future popular appeals unnecessary—in short, should the proposition of the member from Frederick prevail, those seeds of interminable discord will be scattered through the country, which nothing but another Convention or a division of the State can eradicate. I agree with the gentleman perfectly. I agree that nothing short of a permanent provision for future apportionment can avert the calamity deprecated. But, to produce the beneficial effects of averting discord or division, the rule of future apportionment must be *just*. It must secure the rights and accord with the common sense of the great body of the people. Had the proposition of the gentleman prevailed, the war would have begun instantly—and would have commenced, not only against the present assumed basis, but against the gross injustice, in my opinion, of its prospective operation. The gentleman supposes, that no good can result from the rule proposed by the member from Frederick, because it settles no governing principle; and while I concur in this opinion, will oppose it for another—the inequality of its present basis, and the total want of security for the fair exercise of the power to be conferred.

Mr. President,—although not strictly in order, I will bestow a few remarks on the proposition of the gentleman from Chesterfield, just rejected, in order the better to illustrate my objections to the amendment of the gentleman from Albemarle, considering the latter as an entire whole, or as carried out by the proposition of the gentleman from Frederick.

The amendment of the gentleman from Albemarle, looks to the state of population in 1820. It reposes on the Federal Census of that year. Had there been no relative change of population since, and were we satisfied that none is likely to happen, that amendment might be acceptable. It would work no great injustice; but the effect of adopting it now, either with or without its proposed adjunct, can only be illustrated by a statistical view, which I beg leave to present, much as I dislike this species of labour.

In 1810, the white population was distributed thus, viz:

East of the Blue Ridge,		338,837
In the Valley,	108,355 }	212,726
West of the Alleghany,	104,377 }	

Whole population, 551,553

In 1820, population was distributed thus, viz:

East of the Blue Ridge,		348,875
In the Valley,	121,196 }	254,308
West of the Alleghany,	133,112 }	

Whole population, 603,081

And in 1829, the white population, as estimated by the Auditor, stood thus:

East of the Blue Ridge,		362,745
In the Valley,	138,134 }	319,516
West of the Alleghany,	181,384 }	

Whole population, 682,261

It thus appears that in nineteen years, white population East of the Blue Ridge, beginning with 338,837, has increased to 362,745, or to the amount of 29,908. The increase in the Valley having in 1810, 108,345, has been 29,779: making in 1829, 138,134. These data shew that the increase in the Valley and in the whole East are nearly equal: that in the Valley being the smallest only by a difference of 129. As the Valley has kept pace with the whole East for nineteen years past, so it probably will hereafter, and therefore, a permanent apportionment which would do justice to the present Valley and Eastern population with reference to each other, might probably suit them in all future time; yet, the same apportionment might operate the utmost excess of cruelty and injustice to the Trans-Alleghany country. To concur in such an one, would be a treachery in the Valley, of which we have not the least apprehension. The extent of this injustice will be manifested by comparing the increase of that population during the same period of nineteen years. In 1810, we commenced with a population of 104,377, which, in 1829, is 181,384, having increased 77,007, or four times as much as either the Valley or all the country East of the Blue Ridge mountains.

I have already observed, that the plan of the gentleman from Albemarle rests on the Census of 1820. To sum up its unquestionable injustice, I will, for the present, assume the general correctness of the Auditor's estimate. I will presently allude to that estimate more particularly, and for a different purpose. The increase of Western population since 1820, is 51,336, after deducting from the Western the whole Eastern increase. According to the Albemarle plan, 51,336 white people residing West of the Blue Ridge, are to go unrepresented from the present moment, and they, with all future relative increase in the West, are not only excluded now, by the amendment of the gentleman from Albemarle, but will be forever by the adjunct of the gentleman from Frederick, should that, also, be adopted.

Mr. President,—I will now expose numerically, the injustice offered by the gentleman from Albemarle, under the name of compromise. This I will do first, and then follow this scheme into its adjunct *proposed*, I should say not *offered* by the gentleman from Frederick.

First, then, let me observe, that if the present white population are to be represented by one hundred and twenty-seven members in the House of Delegates, each delegate will represent 5,379 white people—or, in other words, every section of 5,379 white people ought to elect a delegate in this same House of one hundred and twenty-seven members. The proportion East, being deducted from the proportion West, leaves a difference equal to six and a half members. This may be thus demonstrated: According to the Auditor's estimate, the whole white population amounts to 682,261—of which the Western population amounts to 319,516. The gentleman from Albemarle proposes an House of one hundred and twenty-seven members. The number to which the West are entitled by their population is thus proved:

Whole white population 682,261—entitled to members one hundred and twenty-seven.

To what number the West?

First, whole West,

682,261:127::319,516:59 325133

682261

Of which fifty-nine members, and a half, the Valley and Trans-Alleghany country, are entitled as follows, viz:

First, Valley,

682,261:127:138,124||25 ×

West of Alleghany,

682,261:127:181,384||33 ×

So far I have calculated by the estimate of the Auditor. If population had not relatively changed, the gentleman's amendment is not far from what is right. By the Census of 1820, we were entitled to fifty-three members and a fraction, and the East to seventy-three and a fraction. This would give a majority to the East of twenty members; but the gentleman from Albemarle turning these fractions to the best account, takes them all to the East, and makes out of them an unit, and thus gives the East a majority of twenty-one members.

Mr. President,—When we stood on the whole basis in this House as forty-nine to forty-seven members, we represented 402,000, and you 280,000 white people. This great majority was very encouraging. I admit, it is now considerably lessened, having lost part of the Albemarle delegation. The majority is yet great enough to be respected. My friend from Albemarle overlooks all changes of population since 1820, because we have no official tabulars of it since then—in doing this, the gentleman takes from the West six and a half members to which they are now entitled, and adds that number to the East, which makes a difference of thirteen members. Then taking to the East its rightful majority of members according to present population, and making a judicious application of fractions, he adds eight more members, and thus acquires his majority of twenty-one members.

The power thus to be conferred on the East by taking from the West six and a half members, and adding them to the East, is immense. It is irresistible. But then it

is not *professedly* taken as a slave or other property Representation, and therefore, is can be voted for by those whose consciences will not permit them to sustain a property basis of any kind. On what basis then does the gentleman from Albemarle rest his apportionment? Certainly not the *present* white basis which I had thought we both came here to maintain. But, it is said to be founded on the white basis of 1820, and that we have no regular table of population since. This, Mr. President, might do if we were ignorant of the fact. The gentleman takes power from us to give it to the East. This is not done on the mixed, Federal, or any other basis of property whatever; but it is done. It is power that is taken, and power, after all, is *power*, and is the very thing demanded by the East, by every basis they have proposed.

The gentleman from Chesterfield, and his friends, admonished us very early in this debate, that interest is a tyrant passion not to be controuled in political transactions by all the restraints of power, religion, duty, or even of oaths; and that, indeed, there was no security against its influence but in the possession of power to resist it. Our present struggle has shewn that there is too much truth in this lesson, at least where perpetual power is the object in view.

Knowing well the late increase of Western, over Eastern population, I foresaw last winter the propriety of a Census of it to be laid before this Convention. I had the honor to offer a measure for it in the late House of Delegates. That measure was supported by those, who I believe, represented a majority of the people. It was rejected, but by whom? A majority who represented a minority, and who would not permit an official table to be laid before this body. They had the power to shut out this light, and they exercised it because they had it, and because it suited their purposes to conceal the truth from our eyes. The consequence is, that when I complain of the inequality of the proposed apportionment, I must rely on the present state of population, and on the Auditor's statement of its probable condition. But although this is relying on an *estimate*, I think I will satisfy every man who understands the rule of three, that this estimate may be relied on as sufficiently accurate for the present purpose. I will assume it as a fact, that those paying a tax on lands or on property, bore about the same ratio to the whole white population in 1790, 1800, 1810 and 1820, that they did in 1829. In each of these years there was a Census of population taken, and in each, the Auditor's office will shew the number of persons paying a land tax, and the number paying a property tax. The property tax book is the safest document, because those paying that tax are residents. What difficulty is there in ascertaining what ratio the number of those paying a property tax in any county, bore to the white population of the same county in 1790, in 1800, 1810, and 1820? And, as the Auditor possesses the tax books for 1829, what danger is there of falling into any great error by assuming that the tax-payers of 1829, bear the same proportion to the present white population that they did in the several years when a Census was taken? I have tried this on the tables of several counties, and there is no difficulty in it. There is a difficulty, not in arriving at a knowledge of the fact, but in the proof. When we assert that which every man may know to a reasonable certainty, if he will, we cannot maintain our assertion by *record proof*.

I trust I have proved, satisfactorily, that the plan of the gentleman from Albemarle, is to create an House of Delegates of one hundred and twenty-seven members, and in which the East is to have a majority of twenty-one, being fourteen, or at the very least, thirteen more than the East are entitled to by any fair principle: An House of Delegates, in which the East is to possess uncontrollable power in the first instance. To such an House of Delegates it is, that the gentleman from Frederick proposes to give power to re-apportion representation, after 1840, or 1841, without compelling them to observe any particular ratio, principle or basis.

Will such an House of Delegates part with their power? Does my friend hope, much less believe it? Before we can believe these people will impair their own authority willingly, we must absolutely forget what happened so short a time ago as last winter, and all that we behold here every day with our own eyes.

This would be perpetuating power to be sure; but then it will be an unequal and oppressive power, and it would only differ in *degree* from that just view proposed by the gentleman from Chesterfield, whose plan of power, present and future, has just been rejected.

The gentleman from Albemarle, proposes an House of Delegates of one hundred and twenty-seven members, fifty-three of whom are to be West of the Blue Ridge, and of these fifty-three, twenty-nine are to be West of the Alleghany, and twenty-four in the Valley. The gentleman from Chesterfield, proposed the whole number of the House of Delegates to be one hundred and thirty-nine—that is, to add to the number of the gentleman from Albemarle twelve. Of these, he proposed to give to the country West of the Alleghany three, making their number thirty-two—giving to the Valley nothing in addition. Now, in his proposed House of Delegates of one hundred and thirty-nine members, the thirty-two he proposes for the extreme West, bears the same relative proportion to one hundred and thirty-nine, as the number twenty-

nine did to the other whole number one hundred and twenty-seven. The difference, then, between the two plans, was precisely this: The gentleman from Albemarle, would commence with fifty-three West and seventy-four East; and the gentleman from Chesterfield, with fifty-six West and eighty-three East—giving to the East at the commencement, a majority of twenty-seven, instead of twenty-one.

But, the gentleman from Chesterfield, allows ten new counties to be created in the West, and on that account, ten additional members to be granted to the West. Even this he refers to the discretion of the powers that be—to be exercised by a majority of the members of each House. By his scheme, this whole power might be exhausted, by one legislative act of the first Legislature under the new Constitution. Suppose, then, the most favorable result—that ten new counties should be made, and ten additional members given to the West: then the West would have sixty-six members; and if eleven should be added to the East, that would give the East ninety-four members, and thus there would be an House of Delegates of one hundred and sixty members—the largest number he would allow—in which the East would have, in all future time, a majority of twenty-eight, *if even the Eastern population should be stationary, and the West increase to a million.*

I am satisfied, Mr. President, that if a Constitution should be offered to the people, on either of those plans, it would, nay, must be rejected by the people. And, as I before said, I would infinitely prefer to do nothing.

Mr. Leigh observed, that he had nothing to say in relation to his own proposition. He considered its end as defeated the moment the gentleman from Frederick declared that all the West would vote against it; because he presumed him to speak from certain knowledge. He had only presented it as a scheme for conciliation; it failed of its end, and from that moment all its value was lost. But now, they had a proposition by which the property of the East was secured to it *for ten years*, with a reversion in favor of the West after that time. A gentleman from Amherst, (Mr. Thompson,) seemed to think the East would surely be content if they had that possession extended to twenty years; they would not certainly repine if they were allowed a life estate in their property. But, for one, he preferred the simple proposition of the gentleman from Albemarle without any addition whatever, to any scheme which should contain the admission that sooner or later the property of the East was to pass over into the possession of the West.

Mr. Thompson said, he had offered the amendment with a view to making the proposition more acceptable to gentlemen from the East. He had understood it to have been admitted all along, that the period would arrive when the balance of power would pass into the hands of the West. That period, if he recollected right, had been fixed by the gentleman from Chesterfield himself at about the year 1855.

Mr. Leigh replied, that he had said if the Auditor's calculations were correct, and the mixed basis should be adopted in both Houses, the increase of population and taxes to the West might give them the balance of power about that time.

Mr. Thompson said he was by no means tenacious—he would withdraw his amendment. And he withdrew it accordingly.

Mr. Johnson, adverting to the expense of taking an assessment of all the lands of the State, thought that once in ten years was too frequent, and that once in twenty years would be sufficient. His view would be to fix an apportionment of representation among the great divisions of the State, and then to let the county representation be made as equal as possible among the large counties. He moved every *twenty* years, instead of every ten.

Mr. Powell, with the consent of Mr. Doddridge, varied his amendment, so as to read 1841, instead of 1840.

Mr. Doddridge could not accept as a modification the suggestion of Mr. Johnson, as to increasing the interval between the assessments from ten to twenty years.

Mr. Powell said, that with the deepest solicitude any human being could feel, he had turned his attention to the proposition of the gentleman from Albemarle, with a view to find whether it contained any thing that would warrant him in voting for it. He regarded the peace and good feeling of the West as of vast importance, and was most desirous to secure it; but he really could not bring himself to vote for the plan, unless some additional provision should be appended to it, having respect to future apportionment. He hoped something of this kind which he could approve, would be united with it, and then it should have his support.

Mr. Scott, in reply to Mr. Doddridge; observed, that it seemed the gentleman who moved the present amendment, had changed his opinions on the subject of Government. The House had heard from that gentleman and from others who acted with him. very able and ingenious discussions on the principles of republicanism: They had laid down, *a priori*, what were the distinctions between a republic and an aristocracy, and an oligarchy: and this proposition or that, had been pronounced acceptable to them, according as it squared with these fixed, unalterable, *a priori* principles, derived from nature and the fitness of things. They, on his side of the House, had

contended for opposite doctrines: they had insisted that in establishing a Government, respect must be had to the interests of the governed: that men were always swayed by interest: that it was dangerous to trust to their passions—and that there must be a check and controul founded in their interest, to counterbalance those passions. Now, it appeared, the gentleman had at length, become a convert to their sentiments. For, his main objection to the plan of the gentleman from Chesterfield was this, that the only guaranty it contained for the security of the West was, that the members of an Eastern Legislature would be governed by *principle*. Now, it seemed, men were very prone to be governed by interest, and all that had been said about conscience, and a moral sense, &c. was not to be regarded. The gentleman had formerly told the Convention, that the representation of slave property was utterly odious to him, and to all in that portion of the State from which he came. But the gentleman was a convert on this subject also: and now he was the man who proposed to engraft on the scheme of compromise, that very principle of the representation of slave property. The gentleman had addressed himself to Eastern Virginia, and very successfully. So successfully, that he had induced them, out of magnanimity, to forego the interests of that section of country, for the sake of *principle*, pure *principle*, and in pursuance of the true doctrine of republicanism. But, now, the gentleman said to those very men, I ask you to defeat and overturn those doctrines which you believe to be the *a priori* truths of genuine republicanism: and I ask you further, to engraft upon the plan of compromise a principle which I have declared before the world to be unjust and odious: and to do this in such a way as to prostrate the interests of your own constituents, for the sake of those of a gentleman from Brooke. When the gentleman had said he was willing to make this sacrifice for the sake of compromise, they had asked him why he would not consent to engraft the same principle on the House of Delegates? The ingredient was the same in either House. The answer was furnished by his present course. It now seemed that the *principle* by which he had been governed, and the only principle, was a regard to Western interest. Now, the gentleman avowed the principle that men are governed by their views of interest. And, thus situated, the gentleman hoped to prevail with Eastern Virginia, to induce her to defeat his own favorite principle, and that to the injury of her own people! So far was Mr. S. from regarding the Federal number in the Senate as a protection, that he esteemed it even worse than the white basis alone. He had rather accept the white basis in both Houses. To organize one House on one basis and the other on the other, would be to provide for a perpetual war between them.

The feature was avowedly odious to the people of the West, yet the gentleman pressed to have it inserted. He would not say that this was done *because* that principle was odious to the West; but this was obvious, that if the gentleman wished to render the new Constitution distasteful and odious to the West, this was a direct mode of effecting that object.

Why not accept of the compound ratio? Its effect would be almost exactly the same. He would not answer the question. How easy would it be to expel this principle from the Constitution! The people of the East began already to be presented in an unfriendly manner to their Western brethren. They were called "the Eastern Dons." The terms "black Senate" and "negro Senate" were already heard. And with this spirit prevailing, the West were to have the entire controul of the House of Delegates. Who so dull as not to anticipate the process? The lower House send up a popular bill. The Senate reject it, the West complains of the rejection. Next year, the same bill is sent up again. The Senate again reject it. The clamour, the odium is increased. Other bills are got up—for the very purpose: so framed as to insure their rejection. These are sent up in succession, and one after another are rejected in the Senate, and this is repeated, until at length the people of the West are told, and made to believe it, that they are despised and trampled on. The next step is to pass a bill in the lower House for the calling of a Convention. That bill is rejected in the Senate. The tumult is now heightened. Next session another bill for a Convention is sent up: it is rejected again. And what is the next step? It is this—to call a Convention by *resolution* of the House of Delegates, the Convention meets, and the obnoxious principle is expelled from the Constitution.

I now ask, said Mr. S. if this purpose has not been formed, and been *avowed* since this Convention has been assembled? Nothing, certainly, is more easy of accomplishment. This aristocratic feature, branded in its very birth with the most odious of names, what chance has it to contend with popular commotion and cabal? For my own part I had much rather surrender the whole ground at once.

Mr. Scott concluded by moving to amend the amendment of Mr. Doddridge, by transposing the terms Senate and House of Delegates, so that the House of Delegates should be based upon Federal numbers and the Senate on white population exclusively.

Mr. McCoy spoke in reply: The gentleman from Fauquier has said that a plot has been formed, and avowed, to blow up this negro Senate. I tell him, that if there is

such a plot, I have never heard of it. The gentleman from Fauquier may hear what I do not. But, I have never so much as heard of the plot he attributes to the whole body with whom I act. He charges us with inconsistency. This charge I do not take to myself. I have never denied that the people of Virginia, met in Convention, may base their own Constitution in whatever pleases them best. But throughout the whole of my political life, I have always thought that Government ought not to be based upon property. It is my belief that wealth will always take care of itself: and that it has too much interest and influence in controlling society already, without giving it more by Constitutional provision. I agreed to introduce the Federal number in the Senate for two reasons. I am not for surrendering the principle contended for by the slave-holding States in the Federal Government. The Federal Constitution gives to one half of Virginia a representation based on that number. And this Convention has no right to fix on the State a principle of miserable discord. The people of the East will have a security in such a Senate that will protect this slave property from all unjust legislation. None can disturb them in the quiet possession of it. This was the inducement with me to consent to a compromise. I found no difficulty in it, because on this plan they would not have their property held at the discretion of those who, they say, have got no property themselves. Now, we have some little property to the West. But, we are very poor, very poor: and I think our Eastern friends are not very rich. They have, to be sure, this species of property, which is the cause of all this distress; and which all admit is a curse. Now, I want to have them protected in it. I cannot vote for the proposition of the gentleman from Albemarle, unless it is to have some provision for the future. But, I am willing to go on for ten years without disturbing the question, and twenty years after that; but not to all time. If I can't get something better than this, I had rather go back to the old Government. I shall vote against adopting the Constitution unless something better than this is to be put into it. I have listened with great patience to the debates, (and I am of a very irritable temper) and said nothing; and for the very best reason. I have no abilities for debate: I am not a talking man. I make no pretensions to be so. But, now, I am pretty well weary; and I think it is time we had done.

Mr. Leigh rose to state a matter of history; but one which had a bearing on the argument before the House. It was, that a gentleman had called on him that morning and informed him, that the gentlemen from the Valley had assured that gentleman that they were ready to take the compromise of the gentleman from Albemarle as it stood, and would recommend a Constitution with that feature in it, to the adoption of their own constituents: and this statement had been made to him (Mr. L.) with a view to regulate his conduct in reference to his own proposition.

The interview had the effect to render him less zealous than he otherwise should have been in advocating the proposition: and it explained to him the votes which had been given against it, and which he had expected to have been given in its favour. He stated that fact to shew its influence on his own course. The experiment was now about to be made, (he was going to say for the last time,) to see whether the East would be content to agree to a compromise in which they were to accept a ten years lease, and give up the fee simple of their property.

Whether the gentleman from Frederick, (Mr. Powell,) was one to whom he alluded, he could not tell. But now was the time, as he supposed, when this question of the basis was to be definitively settled.

Mr. Powell said, that when he had been last on the floor, he gave the Convention a solemn and most sincere assurance that he could not vote for the proposition of the gentleman from Albemarle, in conscience. And no individual had any right to say that he was prepared to vote for that proposition against his conscience. He never had said to any one that he was prepared to vote for it as it stood; and from whatever source his information was derived, there was no truth in the author's statement, so far as he was concerned.

Mr. M'Coy said, it was very probable he had said that if he was reduced to the dilemma of taking one or the other, he should prefer the plan of the gentleman from Albemarle to that of the gentleman from Chesterfield; but he could take neither, unless there was added some principle of future apportionment. Either would suit him very well for the time present, but he did not come here, and the people did not send him here, to agree to any temporary expedient. He wanted something that should last through time. He had no objections to the propositions in the plan of the gentleman from Albemarle, or even of that of the gentleman from Chesterfield: but to me it seems that no man could cast his eye upon the last, and not see that if that is to be adopted, the East must rule through all time. No matter where the population shall be, or what shall be the growth of the Western country, the East is to rule them through all time.

MR. MASON of Frederick, now addressed the Convention as follows:

MR. President: By those with whom I have the advantage of personal acquaintance, I shall never be suspected of being influenced in rising by the petty ambition

of hearing my voice sound within these walls. Could I be thus actuated, I should be admonished to silence by the attitude in which I stand to this Assembly. I am here as the humble successor of one, who was honoured as the people's choice—their confidence was not given to me; for my seat I am indebted to the kind estimate of those who are now my colleagues.

Were more wanting to repress me, I should be further and sternly admonished, by the august presence of this Assembly. But, Sir, the time has come, when to remain silent might be to betray—Coming as I do more recently from the people, I may perhaps bear with me a fresher impression of their feelings on this momentous question, and though by accident their representative, they shall find me not less true to the trust.

Though not present at your deliberations, I have been not an unmindful observer of all that has passed on this much vexed question of representation. Through the faithful medium of the press, I have attentively heard and maturely I hope, considered all that has been urged on either side—and have taken a view of this controversy different from any that I have seen presented. 'Tis true, Sir, as has been avowed on this floor, that it is a struggle for power—but not as I imagine, a struggle between the East and the West. It is one of those fearful contests, of which all history is full, in which the *Government* is on one side, and the *people* are on the other.

Instances almost innumerable might be adduced, when at periods more or less frequent in the history of every Government, (I care not what its form) this controversy has arisen between the *people* and the *ruling* power.

The people demand the restitution of an usurped authority—the Government refuses to accede—the people persist—the Government stand firm in their refusal—an issue is fearfully made up—most generally the momentous trial of right is avoided by a compromise—when that fails, there is left but the narrow choice, between an abject submission, or the most spirited resistance. I am afraid, Sir, we are now brought to that point in our deliberations.

Let us briefly review the history of this Convention. I shall make no laboured exposition from the statistical tables with which we have been furnished, to shew that it has been called by a large majority of the white population of the State—I am warranted in that assertion. It was loudly again and again demanded at the hands of the Government, before it was extended—in 1817, the popular clamour was for the time appeased, by a new arrangement of the Senatorial districts, so as to accommodate that branch somewhat nearer to an equal representation of the white population.

The *douceur* had its effect, and the evil day for the time postponed. But it could not last—the thing was wrong in itself—the people would never be satisfied so long as they were held in all things obedient to the will of a confessed minority. This, Sir, was the grievance. The Government was called to retribution in this—a Convention was demanded almost for this alone—I speak, Sir, for the people whom I am here to represent in part, and for the whole adjacent country. I speak the voice of the entire West when I say, that to equalize the representation—to place the Government where of right it ought to be, in the hands of the majority of the political community, was the controlling motive which impelled them to a Convention.

Other objects may have been in view, but they were of far minor consideration—compared with this, they were but as a feather in the scale. A minority, and a very small minority, wielded the whole power of the State. The foundations of our institutions were subverted, and the grand effort was, to restore the power where it rightfully belonged, to the majority of the people. I speak, Sir, of the only majority I ever knew—a majority of the political community—of the free white population. Much refined and able reasoning has been adduced to shew, that this is not the *true* majority—I have neither time now, nor perhaps ability to reply to the argument, but permit me to say in part, to the gentleman on the other side, who has attacked this republican fortress with most effect, in the language of a pithy poet, "*addidit robur invalidæ facundia causæ.*"

I never can acknowledge but one majority in our country—and those whom we represent here, expect us to keep this steadily in view.

Again, by our brethren of the East, the right of the majority to rule, is denounced as an *abstract* principle. If any principle, apart from practice, is worthy to be denounced, it must be, because such principle is not only in practice, inapplicable, but ought not to be applied. When such principle is found in the abstract, and is ascertained impracticable, I agree that it ought to be denounced—but if the principle in question be such, surely all popular Government resting upon it, is included in the denunciation. To this, gentlemen are inevitably brought—and if their denunciation be rightful, what a farce is your whole scheme of popular Government. If it be rightful, put aside at once all your popular forms, and assume some other rule of power. Only, we entreat you, let your people know what their Government in truth is. Do not announce it in your Bill of Rights in one breath, and violate it in your Constitution

in the other, Speak boldly forth and let the people know that power is no longer theirs—don't "keep the word of promise to the ear, and break it to the hope."

But, Sir, we are told on the other side, in further answer, you require of us by your scheme of Representation, to surrender up our property to your absolute controul. Though I should rely much on the strong sound sense which pervades the people, I have no overweening confidence in public virtue—I know well that under that mask, much and cruel injustice has been done. It is seldom safe, to trust one man, or a set of men with the property of another. But the supposition that we require this, is clearly gratuitous. Property, as the subject of taxation, is diffused through the whole State. Though you of the East may have much, we of the West (as we have been just told by the venerable gentleman from Pendleton,) have some little too. In a question of taxation, or of confiscation, he who has little is as deeply concerned as he who has more.

The rich argosie which bears abroad a nation's wealth, takes with it too the seaman's humble venture—if dash'd upon a rock, or plundered by pirates of the sea—the merchant is spoiled of his gains—whilst the seaman's all has perished. Does not the figure illustrate?

Where then is the disparity found? The grain-grower of the West may have an humble competency—whilst his more favored neighbour of the East, may have that which commands the luxuries of the Indies—tax them both equally—they both feel it equally—and though the Eastern man pays more, he in fact feels its loss far less. This argument will apply throughout, as far as property is homogeneous.

But an objection is drawn from the fact that there is to the East a peculiar species of property of which the redundancy is there so great, that there is no correspondent sympathy to the West. I give to this, Sir, its full weight. Not that I believe there is any real ground of apprehension, that it may be unjustly taxed; but its character is so peculiar, that I can well appreciate the anxiety, which would place it beyond the reach of harm. It is the peculium of the South, unfortunately there, we believe; yet so long as it remains, it should be sacred in their hands: In its careful management, and delicate conversation, those who possess it, have a deeper stake, than the mere right of property: it is natural they should be sensitively alive to all that affects it, and far be it from me to advise any profane approach.

But, Sir, having made this acknowledgment, is it not asking too much in return, that for the sake of that, we should surrender to them our birth-right? That we should hand over to them an absolute dominion over ourselves—or rather should I not say, submit to their exaction? for as such is it required.

Mr. President,—To quiet this apprehension, we have offered to concede much—at least, so we have fondly thought. We offer it now, and I fear for the last time, by the amendment in your hands. We offer a guarantee in the Senate, by infusing there the Federal numbers. But the popular branch must be pure. Distant as we are from our constituents, we cannot say how far they will sanction this concession. I for one, am willing to assume the responsibility; and if wrong, to look for my acquittal in that generous confidence, on which the Representative principle is founded. The gentleman from Brooke, who offered the amendment, and my colleagues, nay, the entire West, will go thus far. But, Sir—I speak it not in anger, nor as menace—when I say, farther I cannot go—farther (I think I may speak it for them,) they will not go. Take it then as our ultimatum. So far as I know the will of those whom I represent, every principle of obedience forbids it. Though now a minority in the Government, they have become so by the fortuities of time and accident. To remain such by their own act, as they would do, by taking the proposition of the gentleman from Albemarle, without the amendment of the gentleman from Brooke, would rivet their chains, and conclude them for ever.

As to what has been said by the gentleman from Chesterfield, of a communication to him, that many of the Valley members would unite on the plan of the gentleman from Albemarle, if his was abandoned, it must have been founded in misconception—
[Here Mr. Neale interposed to explain, &c.]

The gentleman from Richmond, is not the man to misrepresent, but he may have misapprehended—

Mr. Neale here again interposed, and said:

Mr. President,—I rise to state, that it was to me the gentleman from Chesterfield alluded, when he said, that a member of this House, had this morning made a communication to him, as to the probable vote of the Western members on the proposition of the gentleman from Albemarle, (Mr. Gordon.) I had not intended to have noticed the allusion, knowing that in the course of the debate, the whole matter would be explained by others; but the gentleman from Frederick, (Mr. Mason,) has again referred to the subject, and I feel bound to put this matter upon the ground it should rest.

Two gentlemen of honorable distinction in this body as elsewhere, who will, I doubt not, at a proper time, confirm what I am about to state, were conversing with me last evening on the subject of the vote given yesterday in favour of the plan of

Representation proposed by the gentleman from Albemarle, 50 to 46. They expressed an opinion in which I fully concurred, that it was the final opinion of the House, and that the Western plan was irretrievably lost. They expressed great apprehension that the new scheme of the gentleman from Chesterfield, (Mr. Leigh,) might be carried by the Eastern gentlemen. They stated that such a result would prove fatal to the last hope of forming a Constitution which would be accepted by the people of Virginia: That they could not vote for a Constitution so obnoxious and injurious to the West, and the people of the West would vote against it to a man, and so would many of the East: That if that scheme, so odious to the West, could be defeated, they had sanguine hopes, and were of opinion, that twenty or more of the Western members, now that their favorite plan was lost, would unite with the East in voting for the plan of the gentleman from Albemarle, which in their opinion, was in fact, more beneficial to the West than their own favorite plan: That if the Eastern gentlemen would be satisfied with the proposition of the gentleman from Albemarle, (Mr. Gordon,) they would advocate it, (as all their own schemes had failed,) and that they thought, that gentlemen from the West (in which I certainly understood that the Valley was included,) would very probably to the number of more than twenty, unite with them—and if I concurred, I might, if I thought proper, communicate the same to my friends. That their own schemes had failed; and that of the gentleman from Chesterfield, they deemed obnoxious and injurious; and they were willing to take the plan voted for as presented by the gentleman from Albemarle, it being the best which they thought could be got.

I this morning made the communication to many of my political friends, among whom, was the gentleman from Chesterfield, to the effect of which I have stated, and expressing always, that I believed, that the plan of the gentleman from Albemarle would be voted for by members from the West: That I had great reliance in the opinion and discretion of those with whom I had conversed, without even having named the gentlemen to my friends.

I considered the information which I gave as important, if we wished to frame a popular Constitution—and to my mind, as good a compromise of the question of Representation as it was practicable to obtain.

I was well convinced that the plan of the gentleman from Chesterfield could not go down; and I voted against it, in the hope, that the prediction of the gentlemen, with whom I conversed last night might prove correct, as to the fate of the scheme of the gentleman from Albemarle. In all this matter I laboured sincerely, to put at rest forever, (if I could) this much agitated and agitating question of Representation.

Mr. Mason—If the gentleman is right in his apprehension, I am entirely ignorant to whom there is allusion—certainly not to me.

I have finished, Sir, all that I had to say. I feel—deeply feel—interested in the fate of the amendment; for on it hangs, I fear, the peace—the peace—if not, the integrity of Virginia.

The question was then put on the amendment of Mr. Johnson, (proposing an interval of twenty years between the assessments of the lands of the State,) and it was adopted.

Mr. Summers moved to insert the words “at least” before the words “twenty years:” but it was lost.

Mr. Scott now moved to amend so as to give the Federal number as a basis of Representation in the Lower House, and the white basis in the Senate.

Mr. Campbell of Brooke, moved an adjournment, but it was lost.

Mr. Doddridge demanded the ayes and noes on Mr. Scott’s motion, and they were ordered by the House.

The question was then taken on the amendment of Mr. Scott, (to reverse the two Houses, putting the Federal number in the Lower House, and the white basis in the Senate,) and decided in the *negative* by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—44.

Noes—Messrs. Tyler, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M’Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M’Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson and Massie—52.

So Mr. Scott’s amendment was rejected.

The question next recurred on Mr. Doddridge’s amendment, when

Mr. Scott moved to amend it so as to give the Senate a basis on Federal numbers, and the Lower House a basis on "population and taxation combined."

Mr. Doddridge asked the ayes and noes which were ordered and taken accordingly, and stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—45.

Noes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson and Massie—51.

So the amendment of Mr. Scott was rejected.

Mr. Martin now moved to amend by striking out "1841," and inserting "1850," (for the time of re-apportionment of the Representation in the Legislature.)

This amendment was also rejected by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Massie, Bates, Rose, Coalter, Joynes, Bayly and Perrin—43.

Noes—Messrs. Jones, Goode, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Logan, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson, Neale and Upshur—53.

The question was at length taken on Mr. Doddridge's amendment as amended by Mr. Johnson, viz:

"After the year 1841, and every *twenty* years thereafter, there shall be a new apportionment of Representation, and a new assessment of land taxes—each apportionment of Representation shall be made in the following manner and on the following basis, viz: the number of free white inhabitants in the House of Delegates, and the Federal basis in the Senate."

When the vote stood as follows:

Ayes—Messrs. Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson and Massie—48.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—48.

So the amendment not having a majority in its favour was lost.

[The Convention therefore, have, a second time, rejected the proposition to base Representation in the House of Delegates on the white population exclusively.]

Mr. COOKE now rose, and spoke as follows:

He said, that he felt himself impelled by so strong a sense of duty to state his views of the subject under the consideration of the House, that even at that late hour of the day, when the patience and the physical strength of his auditors had been worn out by a protracted and agitating session, he was induced to throw himself on the indulgence of that honourable body. And if, (continued Mr. C.) in the remarks which I propose to make, I shall subject myself to the charge of egotism, I rely with confidence on the kindness of the House, and shall expect their forgiveness; not only because it is my first offence, but because it will be seen that the peculiar position in

which I stand, renders egotism indispensable—absolutely essential to the exposition of my views.

Without further preamble, then, I say, that from the year 1816, and I might safely say from a much earlier period, I have been a firm and zealous, and am accused of having been, an uncompromising friend of reform. I am one of three persons, all at this time present, and members of this honorable body—I allude to the two gentlemen from Berkeley, (Gen. Boyd and Mr. Pendleton,) who in the month of February, 1816, gave the first decided impulse to the cause of constitutional reform among the people of Western Virginia. At the period just mentioned, we caused a circular letter to be addressed to gentlemen in various parts of the Commonwealth, who in consequence of the invitation contained in it, assembled, to the number of some twenty or thirty, in the month of May following, in the town of Winchester. At that Convention, the grievances of Middle and Western Virginia, and the most efficient means of obtaining redress, were the topics discussed and considered. It resulted in an earnest appeal to the friends of reform, throughout the Commonwealth, urging them to assemble in their respective counties on the 4th of July following, for the purpose of electing Delegates to a Convention, to be held at Staunton, in the month of August following.

The avowed purpose of assembling that general Convention of the friends of reform, was to devise means for effecting a full and free Convention of the people of Virginia, for the reform of her institutions; a Convention which should enforce, by a new, or amended Constitution, *the equal rights of all the people of Virginia*; a Convention which should give practical effect to the great political principles announced in the "Declaration of the Rights of the people of Virginia, which do pertain to them and their posterity;" to the principles, that "*all power is vested in, and consequently derived from, the people,*" and that "*a majority of the people have an indubitable, unalienable, and infeasible right,*" to controul the affairs of the Commonwealth: Principles wholly disregarded in the actual Constitution of Virginia.

A Convention of the friends of reform was held at Staunton in consequence of this appeal. The result is known; and I will not weary you by pursuing further the history of that popular movement which at length resulted in the assembling of this Convention.

But I will say, and I say it *proudly*, that, from the time of that first movement to the day on which I address you, I have been a firm, an undeviating, a zealous, aye, Sir, an *ardent* friend of *the rights of the people*. The promotion, the enforcement, of those rights, by constitutional reform, has ever since been, and still is, an object *near and dear to my heart*. Notwithstanding the vicious principle of representation under which this body was elected—notwithstanding that provision of its organic law, which gives to fifteen thousand citizens, near to the line of North Carolina, the same representation with sixty thousand who dwell in a trans-Alleghany district, I did not "despair of the Republic." I did not abandon the hope, to which I had clung so long, that a Constitution would be formed, by which the equal representation of *the people of Virginia*, in both of the Legislative bodies, would be carried into full effect. To that hope I clung till my reason told me to despair of its accomplishment. After a protracted, an obstinate, and I may almost say, a fierce contest in this Assembly of several weeks duration, it was but too apparent that victory had deserted the banner of the friends of reform—that they had not numerical strength in this Assembly to carry into *full effect* the principles of their political creed—that the effort to obtain an equal representation of the *people of Virginia* in the *Government of Virginia*, must be abandoned as hopeless.

But still, much had been gained. The ramparts of the old Constitution had been defended, it is true, with a zeal, an ability, and a gallantry, that must extort praise even from an enemy. Our ranks had been thinned, and many of our attacks had been repelled. But we were neither routed nor dismayed. Thus much, at least, we had attained: It was given up on all hands, that the actual distribution of political power through the territory, and among the people of Virginia, under the existing Constitution, was too grossly unequal to be longer endured, and that a more equitable plan of distribution was indispensably necessary. The disfranchised class of the non-freeholders, too, had found favour in the eyes of a majority of this Assembly; and it was ascertained, that a Constitution would receive its assent, by which four additional classes, to wit: small freeholders, reversioners and remainder-men, lessees for years, and house-keepers paying taxes, should be admitted to a participation in the sovereignty of the country. It had also been ascertained to be the sense of a majority of this body, that our unwieldy House of Delegates should be reduced in number, and the expenses of the Government diminished. Other useful and economical reforms, it was known would receive its sanction. It was ascertained, in short, that though the equal representation of the people could not be carried, a great approximation towards it was attainable.

Under these circumstances, the alternative was presented to the friends of reform, on the one hand, of abandoning the contest, and dissolving this Assembly, without forming *any* Constitution, or, on the other, of endeavouring to effect something like a fair compromise on the great and vexed question of the basis of Representation.

I contemplated, as was my duty, with a steady eye, the alternative thus presented. I saw on the one hand the continuance, for an indefinite period, of that gross inequality of Representation which has kept Virginia, for thirteen years, in a state of turmoil and confusion: I saw the hopes of my disfranchised fellow-citizens blasted, and their passions aroused and excited. I knew that a large majority of the people of Virginia considered themselves iniquitously held in a state of political bondage. I knew that threats had been uttered, within the last eighteen months; not loud and brawling menaces, but threats, which, by the manner in which they were uttered, manifested a cool, stern, deep, and determined purpose—threats, “that if the non-freeholders did not obtain justice, in the Convention then anticipated, they would no longer submit to the laws and the constituted authorities: that they would refuse to labour on the roads,” (a rank and palpable grievance)—“that they would refuse to pay county levies and taxes—and to perform militia duty; that if the constituted authorities attempted to enforce the payment of the taxes, levies, fines, and penalties, they would resist force with force.” I knew, by the result of a private Census, that in the county of Frederick alone, there were no less than *two thousand two hundred* of these disfranchised citizens—men of full age—and that they bore to the freeholders the proportion of nearly nine to five.

I shuddered at the probable result of a conflict, begun by a stubborn refusal to obey the constituted authorities—proceeding next to an attempt, by those authorities, to enforce obedience by the *posse comitatus*—then a tumultuary and successful resistance, ripening fast into organized insurrection—a military array for its suppression—the passions of the oppressed and disfranchised classes at length aroused to frenzy—and then—a civil war with all its concomitant horrors—houses, villages, and towns reduced to ashes, and many a stricken field strewn with the mangled corpses of our citizens, and drenched with the best blood of Virginia.

Believe me, Sir, this is no rhetorical war; no fancy picture. I tell you, Sir, for I *know it*, that so sure as God is in heaven, the separation of this Assembly, without redressing, in some measure at least, the grievances of the non-freeholders, will be the signal for resistance, passive *at first*, to the constituted authorities. And he has read in vain the history of past ages and other times—and the history of our own revolutionary struggle more especially, who does not see that even *passive* resistance must and will produce an attempt, on the part of the Government, to enforce obedience—that *that* attempt will arouse the passions of the oppressed, and that civil war will be the result.

This, Mr. President, was one of the alternatives, carried out to its results, presented by the refusal of a majority of this Assembly to recognize *the equal rights of the people* to Representation in the Legislative bodies. The other, as I have said, was the abandonment of long cherished hopes—the sacrifice of a great principle—a principle coeval with the Republic itself, and endeared to us by its association with all those early feelings of enthusiasm inspired by the story of the Revolution. But in abandoning those hopes, we did but bow to the supreme law of necessity—in sacrificing that principle we offered it up on the altar of the public safety. The choice was painful but not difficult.

The friends of reform in this Assembly, unanimously determined that it was due to the country to *attempt*, at least, to negotiate a compromise basis of Representation.

The first attempt of the sort was made on the 18th of November, by the worthy gentleman from Goochland, (Governor Pleasants.) As one of the friends of reform, and of conciliation too, he proposed, in effect, that preserving the equal Representation of the people, in the most numerous branch of the Legislature, we should extend the number of the Senate to thirty-six, in deference to the expressed wishes of our political opponents, and distribute the Representation in that body, throughout the Commonwealth, on the basis of Federal numbers. A manifest improvement in the temper of the body was produced by the proposition itself, but more especially by the manner in which it was announced, and by the patriotic feelings by which it was evidently dictated.

That proposition was still on the table, undisposed of, when, on the 25th of November, a second plan of a compromise-basis of Representation was offered to the consideration of the House by the gentleman from Albemarle, (General Gordon.) He avowed it to be his purpose to conciliate both parties, by throwing out of view, altogether, the vexed questions concerning the basis of Representation, which had agitated for weeks, not only this Assembly, but the whole people of Virginia, and which had led to no result, save only the absolute certainty, that a majority of this body could not be brought to unite in any one *principle* of representation which should be the common basis of both of the Legislative bodies. He recommended an arbitrary

apportionment of representation, in which no express reference should be had, either to the principle of the equal representation of the white people, or to the principle of the representation of Federal numbers, or to the principle of the compound ratio of white population and taxation, or to any other of the debateable, and long debated propositions which had disturbed the harmony of the body; an apportionment, in which the sole object should be an equitable compromise, so far as any compromise *can* be equitable, of the conflicting pretensions of the East and the West, with a tacit *saving* of the principles on which those pretensions were founded, and a postponement of their discussion till some future period more auspicious to their harmonious adjustment.

The actual distribution of power contemplated by his proposition, was, that in a House of Delegates of one hundred and twenty members, "twenty-six should be elected from that part of Virginia lying west of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and the Blue Ridge; thirty-seven from the Blue Ridge to the head of Tide-water; and thirty-three from the country below the falls of the rivers." And that, in a Senate of twenty-four, there should be ten Senators from the country west of the Blue Ridge of Mountains, and fourteen from the country east of those Mountains. He has since modified his proposition by changing the number of members in both bodies, without changing materially the distribution of power. His proposition, now under consideration is, that "the House of Delegates shall consist of one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district west of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of tide-water, and thirty-four thence below." And that the Senate shall consist of thirty-two members, of whom "there shall be thirteen west of the Blue Ridge of Mountains, and nineteen east of those Mountains."

I have said, Sir, that the resolution of the gentleman from Albemarle was offered to the House on the 25th of November. I had previously examined, in concert with my friend from Loudoun, (Mr. Henderson,) that of the gentleman from Goochland, by comparing its results with those of the white population basis, which we considered the true standard whereby to measure, by the extent of their aberration from it, the feasibility of all plans of compromise whatever. We now instituted a critical and laborious examination of the compromise-basis proposed by the gentleman from Albemarle. We took next a relative or comparative view of both of these plans, in all their bearings and aspects—in their operation on each section of the State, and on the whole State—in their principles, so far as any principle was involved, and in their practical results—in their probable effects on the various and apparently conflicting interests of the different parts of the Commonwealth at present, and on the same interests, when the relative situation of those parts should be changed, as it probably would be, by the unequal ratios of the increase of their population. The result of this examination was a deliberate and well considered preference for the plan of the gentleman from Albemarle, *in regard to the present or actual distribution of political power.* We considered it, however, a great defect in the plan, that it provided no rule for future apportionment, so as to adapt itself, from time to time, to the varying population of the different sections of the Commonwealth; the attempt to frame such a rule having been abandoned, or rather never made by its author, because he considered that the very attempt would bring into instant conflict the discordant pretensions of the contending parties, which it was the main object of his plan to keep in a state of quiescence. But, even in this respect, we considered his plan a more acceptable compromise to the *West* than that of the gentleman from Goochland, because we deemed it the interest of that comparatively non-slave-holding part of the Commonwealth to have *no principle at all* of re-apportionment rather than a principle, which, *in all time to come, would make every five slaves in the East equal to three citizens in the West in the organization of the Senate, a body intested with power to negative every act of legislation proposed by the House of Delegates, however vital in importance to the people of Western Virginia.*

Impressed with these views of the character of the two plans of compromise, and deeply impressed, too, with the critical, if not dangerous, state to which the dissensions of this Assembly had brought the best interests of our country, we resolved to make an effort, at least, to *foster that spirit of conciliation then so recently manifested.* We resolved to *commence* with an attempt to unite the friends of reform in some scheme of compromise to be afterwards tendered to our fellow-citizens from the East and the South. We accordingly effected a meeting, on the 27th of November, of the forty-nine members, or a great portion of them, who had voted for the first resolution of the Legislative Committee, recommending that "representation in the House of Delegates should be apportioned with regard to white population exclusively." The discussions which took place at that meeting disclosed the fact that a *considerable number*, at least, of the *Western* members, felt a decided preference for the scheme of the gentleman from Goochland. The meeting resulted in the appointment of a Committee, consisting of a gentleman from the Trans-Alleghany district and myself, to con-

fer, on the following day, with those members of the *forty-nine* who represented the districts lying *East* of the Ridge—to ascertain whether *they* could unite in any scheme of compromise which would be acceptable to the Western members, and to report the result to a second meeting of the forty-nine members, to be held on the following evening. The Committee which I have mentioned did accordingly confer, in the course of the following day, with all the members before alluded to, *East* of the Ridge, except the venerable Ex-President of this body, who had not attended the meeting of the evening before. The result was, that the members of the forty-nine residing *East* of the Ridge, concurred in recommending to their political friends of the *West*, a compromise scheme of representation exactly according in the actual distribution of power with that of the gentleman from Albemarle. The scheme proposed by those gentlemen was, a House of Delegates of one hundred and twenty members, and a Senate of thirty-six: the members of the House of Delegates to be distributed, fifty to the *West* and seventy to the *East*; those of the Senate, fifteen to the *West* and twenty-one to the *East*: “this apportionment of representation to remain unchanged till the year 1841, when, and at the expiration of every ten years thereafter, a re-apportionment of representation *may* be made by law in regard to the House of Delegates.” The gentlemen in question also desired the Committee to report that “they were not to be considered as peremptorily pledged, in any and all events, to vote for the final adoption of the scheme recommended, but merely as offering a plan, which, as then advised, they were determined to support, should it prove acceptable to their political friends of the *West*.”

The report was made to a second meeting of the forty-nine, or a considerable part of them, held on the evening of the 23th. At that meeting the gentleman from Albemarle attended, and explained his scheme of representation. But a still more decided preference was by this time manifested for the scheme originally proposed by the gentleman from Goochland, to wit, the *white basis*, as it is called, in the House of Delegates, and *Federal numbers* in the Senate: So decided a preference, that, when the opinions of all the gentlemen were ascertained *seriatim*, it was found that the scheme of the gentleman from Albemarle had no advocates except himself, my friend from Loudoun, and myself. That gentleman and myself still retained, and *distinctly expressed*, our decided preference for the scheme of the gentleman from Albemarle: but we frankly stated to our political friends, that, as the *great object* in view was a harmonious co-operation of all the friends of reform in *one* plan of compromise, in order that it might, on that account, attract a more respectful consideration when offered to our fellow-citizens in the Convention from the *East* and the *South*, and as we had no *insuperable* objection to the plan in which they had thus united, we would, in deference to their opinions, and to promote the great cause of Constitutional reform, waive our opinions, and concur with them in supporting their favorite plan, to the extent of voting for it, and giving it a fair trial in the Convention. The gentleman from Albemarle did not join in this promise—a promise which we had afterwards cause to regret. For, by this gratuitous promise, made in the spirit of conciliation, and with the sole purpose of promoting the great object we had so much at heart, we alone were pledged, or so considered ourselves, in the first instance at least, to vote against the scheme we preferred, and in favor of that which we thought the worst of the two, while it was distinctly understood that the other members were not pledged to adhere to the opinions then entertained and expressed. It is proper, Sir, that I should here remark, that the meetings in question were held with open doors, and that there were spectators present at one or both of them. I will add, that the gentleman from Albemarle, who had failed in his attempt to make his plan acceptable to the meeting, was under no sort of pledge, express or implied, to conceal the fact that the gentleman from Loudoun and myself preferred his plan to that proposed by the gentleman from Goochland. I have not the smallest doubt that he mentioned the fact, as he had a right to do, to all with whom he conversed on the subject. And in fact, Sir, our opinion, from the publicity of the meetings, and the circumstance I have just mentioned, was as notorious in this body, from the very time of those meetings, in the last week in November, as if it had been published in the newspapers of Richmond. This fact I state, without the hazard of contradiction. And I state it, Sir, with reference to a most extraordinary and most groundless opinion, which some of the gentlemen of our party have ventured to express, that their strenuous efforts to carry their favorite plan of representation had been frustrated by our indiscretion in letting it be understood by the gentlemen of the opposite party, that though we meant to vote for that plan, and give it a fair trial, we would eventually vote for that of the gentleman from Albemarle, if the Western plan should be defeated. Sir, the idea that we had it in our *power* to conceal our opinion, after it had been so *openly* expressed before the adoption of the *Western plan* as a party-measure, is utterly ridiculous, and the imputation thrown on us is gratuitous and unfounded.

Moreover, Sir, I will take leave to say, that however wise and profound the scheme of attracting to a great political measure the support of its enemies, who are the ma-

jority, by the obstinate adherence to it of its friends, who are the minority—however justifiable it may seem to veteran politicians to hold out a false and delusive impression, in a conflict like this, which is *not a conflict of principle*, but a question of preference between *two plans*, both of them at war with true principles, that they mean to adhere to their own favorite scheme, even to the point of breaking up the Convention or rendering it wholly abortive—however justifiable it may seem to them to sport with the patriotic fears of their opponents, and turn their very virtues against them—I, for one, have not been accustomed to such projects, and practices, have had no part in them, and *will* have none. I will not consent to practice against my countrymen and fellow-citizens, if they are my political opponents, the tricks and devices of hostile diplomacy. And I will add, before I dismiss this unpleasant subject, that the gentleman from Loudoun and myself *could not*, even if we had been inclined, from the circumstances of the case, have aided in the prosecution of such schemes and devices.

But to return to the promise given by that gentleman and myself to vote for the compromise-basis proposed by the member from Goochland, and adopted by the Western members. On the 30th of November, I offered the plan in question to the consideration of the Convention, as *a plan adopted by the Western members, in the spirit of compromise, and in the hope that it would be acceptable to the East*. It had not that good fortune. My friend from Loudoun and myself considered its fate as sealed on the 5th of December, *by two successive votes*. First, by a vote of 50 to 45, *adopting* the plan of the gentleman from Albemarle, providing a *present apportionment* of representation; *the Western plan then lying on the table and fully understood*. Second, and more decisively, if possible, by a vote of 50 to 45, *rejecting* a resolution offered by the gentleman from Brooke, (Mr. Doddridge,) by which it was provided that representation should *hereafter* be apportioned on the *Western plan*, to wit: in the House of Delegates on the basis of white population, and in the Senate on the basis of Federal numbers. This would seem to have been decisive enough. And by voting as we did, with the minority, on both of these occasions, the gentleman from Loudoun and myself, had fully performed, and had a right to consider ourselves released from, our promise to give the Western plan, which we disapproved, a fair trial in this body. Moreover, after those votes it ceased to be a plan of compromise, and *as* a plan of compromise alone had we promised it our support. But operated on by the solicitations of our political friends, who were now heartily embarked in it as a party-measure, and who did not consider the votes I have just mentioned as decisive, we reluctantly consented to give it another trial, expressly announcing our determination to abandon it and vote for what we considered the preferable plan of the gentleman from Albemarle, when the former should be again rejected.

In compliance with that promise we again voted on yesterday, against the plan of the gentleman from Albemarle, when it was perfectly well understood that the vote was a test of the relative strength of his plan and that of the Western members. His plan was again sustained by a vote of 50 to 46, and the Chair was understood to decide, expressly, that by *that* vote the resolution of the gentleman from Albemarle was finally adopted, and that the resolution of the gentleman from Chesterfield, proposing a new plan of representation, offered immediately after, could not be considered, and that it was not in order to offer it till the House had first agreed to re-consider the resolution then recently adopted. The resolution of the gentleman from Chesterfield was then laid on the table, and the House adjourned.

The gentleman from Loudoun and myself having thus thrice voted for the Western plan, and having seen it thrice defeated, and each time by the same vote of 50 members, considered it as finally disposed of, and did not imagine that its warmest friends indulged the hope of resuscitating it, or meant again to try it. We considered ourselves, therefore, fully at liberty to support the plan which we originally preferred, and still continued to prefer, to that which had just been lost. We considered the plan alluded to, that of the gentleman from Albemarle, as imperilled by the new proposition of the gentleman from Chesterfield, which we feared would be brought on and supported by an Eastern majority, by means of a successful motion to re-consider the plan adopted yesterday. We had procured a manuscript copy of this new plan, after the rising of the House, and had critically examined it. We considered it utterly inadmissible—utterly destructive of the rights and interests of the West—and one which a majority of the people of Virginia would inevitably reject. Knowing the high standing of the gentleman from Chesterfield with his party, we entertained serious apprehensions that it would unite the voices of a majority of this body. To prevent a result so calamitous to Virginia, so destructive of all our hopes, we stated our views to the worthy member from Richmond, (Mr. Neale,) whom we knew to be sincerely desirous to effect a fair and honorable compromise—told him how odious the plan in question would be to the people of the West, and earnestly requested him to have it withdrawn, if possible, stating our belief that if it were withdrawn, many of our Western friends, having now finally lost their favorite measure, would unite with

the East in sustaining the plan of the gentleman from Albemarle, which we told him, as indeed he knew before, we preferred, ourselves, to the Western plan which had been lost.

He promised to comply with our request, and he performed his promise; but was unable, it seems, to prevail on the gentleman from Chesterfield to withdraw his resolution. That resolution has been this day rejected, to my no small satisfaction, by a decisive majority.

The friends of the Western plan, hoping against hope, have to-day subjected it to another test, by moving it in the shape of an amendment to the plan of the gentleman from Albemarle. The gentleman from Loudoun and myself, governed more by a punctilio of honour, than by any obligation to perform again the promise, already thrice fulfilled, twice on the 5th of December, and once yesterday, have again on this day fulfilled, for the last time, the gratuitous and ill-judged promise which we gave to the friends of that measure, because they were also our political friends. With our assistance it has at length obtained the votes of half the body, and has just been rejected by an equal division of the House. I trust that it is at last disposed of. I feel that I have pushed my fidelity to a gratuitous promise to an extreme, and I rejoice that I am released from it. I have paid the debt which I owed to my party, I proceed to pay that which I owe to my country. The resolution of the gentleman from Albemarle which I thought had been *finally* adopted by the vote of yesterday, is now on its final passage.

I have said that my friend from Loudoun and myself prefer that scheme to the compromise plan of representation which we have thus far supported. I have suggested, already, one of our reasons for that preference. I proceed to state other reasons which have led us to this conclusion.

Before I do so, however, I must premise that the critical investigations which I have been compelled, by a sense of duty to make, respecting the relative population in 1829, of the four great sections into which the State is divided, have led me to the conclusion that the conjectural statement made by the Auditor is far from being accurate. Indeed, he himself states, that "the white and slave tythables have been in some instances supplied by conjecture, the returns being imperfect, or altogether wanting." And again, "that there are so many probable errors in the *data* upon which the population of 1829 is estimated, that he entertains considerable doubt of its correctness." A conclusive proof with me, if further proof were wanted of the inaccuracy of his estimate, is, that he reports the county of Loudoun, one of the most prosperous in the State, as containing some *four thousand* fewer people in 1829 than it contained in 1820. Other results might be mentioned, equally erroneous; but it is superfluous.

Rejecting his estimate, then, as clearly erroneous, I made an estimate, for myself, of the population of the four great divisions of the Commonwealth, by comparing the Census of 1810 with that of 1820; and having thus ascertained the actual increase of population in each division, between those periods, I assumed that they had respectively continued to increase at the same rate from 1820 to 1829. Having calculated the increase in each division in this mode, which I venture to assert presents a nearer approximation to the truth than any other which can be resorted to, short of an actual Census, I arrived at these results:

The Auditor estimates the actual white population of the State to be 682,261.

By my calculation it is but 671,017.

This variance would not be very material as to the results we have in view, if the excess were distributed among the four divisions with any thing like equality. But it so happens, that of the whole excess, amounting to eleven thousand two hundred and forty-four, he has given to the trans-Alleghany district the benefit of no less than ten thousand six hundred and seventy-six. The error would, therefore, have a very injurious effect on the Valley country in the distribution of representation either according to Federal numbers or white population. The following statement presents a relative view of the two estimates, in regard to the white population of the country west of the Ridge.

The trans-Alleghany country contains, according to the Auditor's estimate,	181,384
The same country by my estimate,	170,708

Difference, as before stated,	10,676
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The Valley country contains, by the Auditor's estimate,	138,132
The same country contains, by my estimate,	137,041

Difference, only,	1,091
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The whole country west of the Ridge contains, by the Auditor's estimate,	319,516
The same country contains, by my estimate, but	307,749

I will further remark, that in making to the trans-Alleghany country the concession that it has increased in population, during the last nine years, as fast as it increased between 1810 and 1820, I have done it ample justice, and probably more than justice.

It is a new country; and, like all new countries, it is increasing fast in population. But like all new countries, the nearer it approaches to a full population, the more slowly does it increase. On this subject we are not left to conjecture. For the gentleman from Augusta, (Mr. Johnson,) in the able argument which he delivered, a few weeks ago, in the Committee of the Whole, on the subject of the apportionment of representation, presented to us the *actual rate* of the increase of population, in the district in question, in three periods of ten years each. On his calculation, the fullest reliance may be placed. And he told us, that by comparing the Censuses of 1790, 1800, 1810, and 1820, he had arrived at the following results: The population of the trans-Alleghany country increased,

Between 1790 and 1800,	83 $\frac{3}{4}$ per cent.
Between 1800 and 1810,	47 per cent.
Between 1810 and 1820,	27 $\frac{1}{2}$ per cent.

Thus it appears that during those three periods, of ten years each, the population of that country increased in a *rapidly decreasing ratio*. If the ratio of increase has continued to sink in the same proportion, the actual increase of the last nine years is probably not more than fifteen per cent. I say probably, because I have not taken the trouble of making the calculation. But the Auditor estimates the increase, I think at about forty per cent. I have said enough, I presume to show, that in my estimate of the population of the trans-Alleghany district, I have done it ample justice, if not more than justice.

Taking my estimate, then, of the relative population of the four great districts as correct, (for I have made an estimate of *all*, though I have not *stated* the precise number of the two Eastern districts,) and applying to the actual population, in 1829, so ascertained, the two plans of apportioning representation between which I am instituting a comparison, we have the following results in a House of Delegates of one hundred and twenty-seven, and a Senate of thirty-two, the numbers assumed in the plan of the gentleman from Albemarle.

Western Plan.

According to the *Western Plan*, to wit: the white basis in the House of Delegates, and the Federal basis (or all the free persons and three-fifths of the slaves) in the Senate.

The country west of the Ridge is entitled, in the House of Delegates to members,	58.25 or	58
The country east of the Ridge to members,	68.75 or	69
Eastern majority,		11
The country west of the Ridge is entitled, in the Senate to members	11.19 or	11
The country east of the Ridge to members	20.81 or	21
Eastern majority,		10

Plan of the member from Albemarle.

According to the plan of the member from Albemarle, (which proposes, as I have said, an arbitrary distribution of representation) in the

<i>House of Delegates,</i>	
The country west of the Alleghany is allowed, members	29
The Valley country is allowed, members	24
The whole country <i>west of the Ridge</i> ,	53
The country east of the Ridge,	74
Eastern majority,	21

In the Senate,

The country west of the Ridge is allowed members	13
The country east of the Ridge, members	19
Eastern majority,	6
In a Senate of thirty-two, distributed according to <i>white population alone</i> ,	
The country west of the Ridge would be entitled to members 14 $\frac{2}{3}$ or	15
The country east of the Ridge to members 17 $\frac{1}{3}$ or	17

It seems, then, that by the *Western Plan* the Eastern majority in the *House of Delegates* is ten members, or about *one-thirteenth* of the whole body, *less* than by the plan of the gentleman from Albemarle. And that by the same *Western Plan* the Eastern majority in the Senate is four members, or *one-eighth* of the whole body, *greater* than by the plan of the gentleman from Albemarle. In other words, *the West gains more in the Senate*, by the plan of the member from Albemarle, compared with the *Western Plan*, than it loses in the *House of Delegates*, by a comparison of the same plans. The plan of the gentleman from Albemarle, therefore, *confers more power on the West than the plan which is so strangely preferred by the Western members*. I apprehend that this statement alone would justify the preference which I, as a Western member, bound by duty and led by inclination to obtain as much power as I can for my constituents, within the limits of justice, entertain for the plan of the member from Albemarle. The weight allowed to the West, by his plan, in the Senate, is only one and two-thirds, or two members less than that to which it is entitled on the true, but unattainable basis of white population. According to the *Western Plan*, to carry any bill in the Senate, no matter how vitally important to Western interests, the West must invoke the aid of *six* out of the twenty-one Eastern Senators. A matter I should apprehend in some cases, of no easy attainment. Whereas, according to the other plan, a Western measure can be carried in the Senate, by the aid of *four* Eastern Senators only—a thing, I conceive, always attainable, having reference to obvious circumstances, provided the measure be just in itself. The obvious consideration, that the Senate will be invested with the power to *negate all bills whatever* sent to it by the House of Delegates, lies on the surface of the subject, has been already adverted to, and need not be further insisted on.

Entertaining these views of the subject, I have been at a loss to conceive the grounds of that strong and decided preference manifested by the Western members for the plan of representation which they have supported. I have heard but one reason in favour of it, which I think even a feasible one. It is, that at some future and far distant day, (which they believe, however, to be not so distant,) the comparatively rapid increase of population west of the mountains will counteract the inequality in the Senate which they are willing to submit to at present. What changes may be wrought by time in the relative population of the Eastern and Western country, no man can tell. But I, for one, am more than sceptical in regard to their sanguine calculations of the rapid and *sustained* increase of Western population. The *rapid decline of the ratio of increase* West of the Alleghany Mountains, and the natural and permanent causes of that decline, have been already adverted to. The increase in the Valley during the last twenty years, has been exceedingly small, and I see no reason to expect any favourable change, which does not apply with equal force to a large portion of the country east of the Ridge. The mistake in the Auditor's estimate, already noticed, has given a temporary countenance to these sanguine calculations; but this illusion will be dispelled by the approaching Census. I may be mistaken in these views, but they are sustained by the able argument of the gentleman from Augusta, to which I have already adverted. The number and extent of sterile and inarable mountains in the West, and the comparatively unbroken surface of the Eastern country, are elements in any sound calculation of the future population of the two regions, too obvious for comment.

On the whole, Sir, I think it may be reasonably doubted, whether under the disadvantage of the gross inequality in the Senate, created by the Federal numbers, the West would ever attain to a majority in that Legislative body. The *present loss* is certain, in the comparison of the two plans; the *future gain* is at best doubtful. On the score of the relative *power* conferred on the West, present and future, by the two plans under consideration, I have nothing further to add.

But another consideration, of an entirely different nature, has operated on my mind with no small force, in the comparison which I have instituted between the plans in question. I entered this Assembly with a political creed which all the eloquence of our able opponents has not shaken, and which will continue to be my creed so long as life and consciousness remain. It is, that *freemen* are the sole elements out of which a republic should be formed, and that equality is the only just rule for the distribution of power among them. And while I bow to the necessity which places the enforcement of this creed, in the Commonwealth of Virginia, beyond the power of the friends of reform, I would at least avoid the *express recognition* of a principle of representation diametrically *opposite* to that which I am compelled to give up as unattainable. I cannot *bring* myself to relish a rule of apportionment, which counts slaves in the East against freemen in the West. I might submit to it, too, as a matter of cruel necessity, but I feel an inexpressible repugnance to the voluntary, and unforced recognition of a principle so odious to my feelings, so repugnant to all my notions of Government. The more I reflect on it, Sir, the more odious to me does this principle of negro representation seem.

There is still another view, Mr. President, which I have taken of the comparative merits of these two plans of the basis of Representation, and the apportionment of power. The interests and the feelings of the East and West are surely discordant enough already, without adventitious aid. Why, then, should we seek to render the Government *more* discordant than it must inevitably be, under the most favourable circumstances, by infusing fresh elements of discord into the very Constitution to which it is to owe its birth? Why create an *Eastern* Senate and a *Western* House of Delegates, for such, to a considerable extent, would be the effect of one of the plans under consideration—to wage a perpetual war—to disturb the peace of the Commonwealth and sacrifice its best interests by their inevitable dissensions? I cannot persuade myself to think, that such a constitution of the Legislative bodies comports with sound and statesman-like views of the true interests of Virginia.

I have thus endeavoured, Sir, to explain the views of policy and principle which have separated the gentleman from Loudoun and myself from the great body of our political friends, with whom it is our happiness still to agree, on every other important subject which has come under the review of this honourable body. You may well conceive, that it has been to us a subject of no small regret to sever from our friends on a subject of so grave and important a nature. No man, we persuade ourselves, can be so unjust as to believe that, in taking this bold and highly responsible step, we have been actuated by any other consideration than a deep sense of the duty which we owe to our constituents and to our country.

Sir, we know the consequences of taking this high, and, in the view of those who differ with us, presumptuous ground—and I say proudly, we are ready to meet them. We know the odium which attaches, in a time, like this, of great party excitement, to any deviation by the member of a party, from the measures of a party. Proudly conscious of the rectitude of our motives, of our undeviating fidelity to the cause of popular rights, we look with serenity on the approach of that storm of popular delusion, perhaps even now brewing over our heads.

I speak not, Sir, of those generous constituents who invested me with the dignified station which I have sought worthily to fill. From *them* I fear no wrong. They sent me thither to protect their interests and to assert their rights, not in the mode that should be dictated to me by others, but according to the best lights that God has given me—the dictates of my conscience and my reason. If *they* shall be of opinion that I have erred in this matter, they will consider it an error of judgment, and not the result of unworthy or interested motives. Sir, I say it with honest pride—they know me well. They will know that I have acted *honestly*, and perhaps I may be able to convince them that I have acted *wisely*.

Mr. Henderson rose and stated, that if he had rightly apprehended the Chair, it was not in order farther to debate the question before the House; upon which the President announced that it was in order.

Mr. H. continued: I do not rise, Sir, at this hour, to enter into the debate, but simply to declare, and, Mr. President, it is unnecessary to make the declaration, that the narrative of my friend from Frederick is strictly accurate; and that I agree with him, most cordially, in every opinion that he has advanced. Yes, Sir, I unhesitatingly pronounce that the plan presented by the gentleman from Albemarle, is better than the project of a House of Delegates on the white basis, with this Federal Senate, not for my immediate constituents only, but for the whole Commonwealth. It is purer in principle, and in its effects it will prove more salutary. This opinion, Sir, is not lightly or hastily formed; it is the fruit of much study, of long continued, anxious, and laborious investigation. I confidently hope to be able to convince my immediate constituents that my judgment is correct; at least that I am animated by motives worthy of the station with which they have honored me. If I fail in both, still, Sir, I feel that I am a man; I feel the proud consciousness that I never sought place, with the fullest conviction that I have no earthly claim to distinction. I am well aware that independence is the fruit of the sweat of the brow; or, Sir, if you will have it so, of the toil of the brain. All that an honest man can claim is an open theatre for his exertions. Gentlemen have talked here of having planted their standards; and amongst them an honorable friend of mine, turning to Mr. Doddridge, my superior in years, and more, much more, my superior in intellectual endowments. Mr. President, these declarations penetrate me with profound regret. I boldly declare, Sir, in the face of this body, and of the ancient Commonwealth which it represents, that I will follow no sectional standard; but, that wherever the banner of Virginia floats, *there, and there only* will I be found.

Sir, we have been told of the "*justum et tenacem propositi virum*;" and that he fears not the "*ardor civium prava jumentum*."

This is the test to which I am willing to be brought. I, in common with my friend from Frederick, held with the respectable gentleman from Richmond county, the conversation which he has detailed. The plan of the gentleman from Chesterfield was exhibited to us. I felt for it aversion, I had almost said abhorrence. The project for

the white basis in the House of Delegates, and *three-fifths of the slaves*, mixed with it, for the Senate, had distinctly and repeatedly failed in Committee of the Whole, and in the Convention. A gentleman with whom I had acted politically here, had declared in his place, that *we were beaten*. In these circumstances, we felt it our duty to urge the gentleman from Richmond county, not to sustain the proposition of the member from Chesterfield, assuring him, that in our opinion, many members from the Valley, and a portion of the Trans-Alleghany delegation, would vote for the scheme of the gentleman from Albemarle. This was conjectural on our part. Seeing that, in our humble estimate, the public weal required it, we had just ground for the impression. We hoped that gentlemen would take this course rather than peril the peace, the happiness, the glory of the State by separation or civil war. If in this we err, it is a delusion of the understanding. The wise and distinguished gentleman from Augusta, (Mr. Johnson,) announced in his place, that the plan which we advocate was better for the interests of the West, than that which it opposes. Allowing, for the sake of the argument, that it is not better, any dispassionate man will admit it to be nearly as good. And then, Sir, no principle whatever involved, for this difference between *tweedle dum* and *tweedle dee*, we are to "cry havoc and let slip the dogs of war!" Sir, I was asked the other day to testify the sincerity of my attachment for my native State by my acts; to shew, otherwise than by words, that I venerated an honorable member of this body. Here, Sir, this day, before this assembly, I tender my proofs. This is the offering that I bring, little as it is, to the altar of our common and beloved country. Happy, thrice happy had I been, had the honorable individual to whom I take the liberty to allude, had gone before me in this race. I did anticipate it; and I feel disappointment, deep and painful disappointment. For myself, Sir, allow me to say, in that which vitally concerns my country, no consideration shall ever induce me, humble as I am, to violate the dictates of my conscience, so help me God.

Mr. Johnson rose in explanation. When what had been called a pledge by the Western members to take a certain course had been given, he had expressly stated it to be his understanding that nothing which passed should bind any body. No pledge had been given by him. He had bound himself to advocate no one measure in preference to another. He had said, that the object of the meeting was simply enquiry; a frank comparison of opinions, to ascertain not what was best, but what was practicable, and then to leave each individual to pursue the course recommended or not, just as he should think fit. He had felt himself at no time bound to vote for the proposition of the gentleman from Albemarle; and the support he should now give it was the result of no pledge to any human being.

Mr. J. said, he should vote for the plan of that gentleman, viewing it as a compromise. But *not* with any view whatever that it was to *sink the question* which had been so much debated. That question never could be sunk till interest should sink in the view of men. He should vote for this as a part of that whole which he had from the beginning endeavored to attain: of that whole which he yet trusted the wisdom of this Convention would be adequate to devise. If they were to be finally driven from any scheme of future apportionment, he could not help it: but his vote was given with no view to put an end to the question as to the just basis of Representation. Two schemes had been presented to the House; one by the gentleman from Frederick, (Mr. Cooke,) the other by the gentleman from Northampton, (Mr. Upshur,) for a system of future apportionment. He would vote for either. He would willingly assume that responsibility, should no other or preferable plan be presented to the Convention.

Mr. Thompson said, it was certainly not his purpose at this late period of its proceedings, to detain the Convention with a speech. He rose merely for the purpose of explaining, and that very briefly, the vote he was about to give. He had been a silent voter on this deeply interesting and agitating question of the basis of Representation, during the whole progress of its discussion up to the present moment, notwithstanding the frequent allusions, direct and indirect, made in the debate, to the district he had the honor in part to represent on this floor. It was evident from the character of those allusions, that by the effect or accident of local circumstances, the attitude he was placed in, and the relation he bore to this question, was one of high importance and weighty responsibility. These considerations he was sure would constitute a sufficient apology for his trespassing a short time upon the attention of the Convention, jaded and exhausted as he was sure it must be, and he assured the Convention it should be a very short time. He meant to say no more than was absolutely necessary to guard his course and conduct from misconstruction from any and every quarter. Mr. T. said, he came to this Convention with the settled and deliberate conviction that free white population was the only true basis of Representation in a representative democracy; and he came pledged to his constituents to act upon that conviction in the votes he should be called on to give here. That conviction had not been in the slightest degree shaken by any thing he had heard in debate, and by his votes he had as faithfully redeemed his pledge to his constituents as he had obeyed the honest dictates of his conscience and his best judgment. He had foreseen, however, at an early

period of the session, that concession and compromise were necessary to bring our labors to an harmonious and happy termination. The fears and apprehensions of his Eastern brethren, which he had hoped could be allayed by a Constitutional guaranty against unequal and oppressive taxation and partial appropriations, had rather been augmented than allayed by the temper and spirit of the debate. Those fears and apprehensions he had heretofore and still considered imaginary, but they were not on that account the less entitled to respect and consideration—and so soon as the idea of a guaranty was repudiated, as it seemed to be, on one side, if not on both, Mr. T. said, he had made up his mind to go for the compromise of the white population basis in the House of Delegates, and Federal numbers in the Senate. This, he believed most conscientiously to be the true and the only middle ground between the parties—it placed the popular branch in its legitimate hands, the majority of free whites—this was made the guardian of persons and personal rights—it gave to the slave-holders the Senate for their protection—and if protection and security be really the object of the East, here was a protection and safe-guard ample and complete.

Here was the shield for which they had asked. To concede the House of Delegates also, would be to put into their hands a sword, not for defence, but which might be employed offensively. Mr. T. said, entertaining these opinions, he had earnestly hoped this compromise would prevail: it had been his "first love," since he had been impressed with the necessity of compromise, and he had uniformly voted for it in Committee of the Whole, and in Convention. By the vote just taken, however, it had been lost by an equal division of the body; and the only remaining proposition now, is that of my worthy colleague, (Mr. Gordon,) upon which we are about to vote.

Of the merits of this proposition, Mr. T. would say nothing, as they had already been fully developed by the mover and other gentlemen pro and con—though the scheme was no favourite with him, he had assured his worthy colleague, and had always intended to vote for it as a compromise, after failing in his first choice, provided in the meantime no proposition less objectionable was presented. He preferred it infinitely to the *projets* of the gentleman from Northampton, (Mr. Upshur,) and the gentleman from Chesterfield, (Mr. Leigh.) Now, indeed, after rejecting all others, we were reduced to this single proposition; and objectionable to him as he would candidly confess it was, he could not hesitate to prefer it to the alternative of making no Constitution. As a present and temporary apportionment, he had no serious objections to it. The great defect was, that it contained no satisfactory provision for future apportionments of power. The object of the mover he had avowed to be to sink that vexed question—this Mr. T. believed to be a vain effort—it could not be, it must be met and must be decided and adjusted sooner or later; and the sooner the better for the repose of the Commonwealth; and he, Mr. T., believed the only practicable and satisfactory adjustment that could take place, since the constitutional guaranty was repudiated, was to adopt the white basis in the House of Delegates, and the Federal or mixed basis in the Senate. This would satisfy a majority of the community and nothing else would. The West were now willing to yield it, and it was to him matter of astonishment that the East would not close with the offer. Mr. T. said, whilst he held these opinions, and whilst he feared that the adoption of the proposition of his colleague, would defeat the passage of the Constitution in this Convention, and if not its ratification by the people, he could not, so far as his vote was concerned, be instrumental in its rejection now—for peradventure the scheme might, contrary to his anticipations, unite a respectable majority here, and a majority of the people. He felt it, therefore, to be his duty under present circumstances, to give the experiment a fair trial, and should it receive the sanction and support of a majority here and elsewhere, as a republican he should feel it his bounden duty, to acquiesce cheerfully in their decision. For these reasons, he should record his vote in favour of the proposition of his colleague, now under consideration.

Mr. Mercer went into an explanation of his course. He considered it due to himself to say, that like the gentleman from Augusta, he had not viewed himself as compromised by any thing that passed at the meeting alluded to. It was the first of the kind, which he had ever attended in the course of his short political life. The meeting was not held in private; other gentlemen were present besides the members of Convention. Some gentlemen whom he did not personally know: the door had been always open to the intrusion of any one. He supposed that the object had been to ascertain whether any compromise could be sustained. He was himself in favour of the plan of the gentleman from Goochland, (Mr. Pleasants,) and had made a calculation, according to which he reckoned a majority of sixteen votes in its favour. When he discovered that they had a majority of twenty-four thousand of the citizens of the Commonwealth in favour of the white basis, exclusive of Albemarle, he had felt much encouraged. Delicate as was his situation, he should persevere in voting against any other scheme than that of the white basis in the House of Delegates. He thought this was the very last moment in which any friend of that cause ought to despair. The vote which had been given rather filled him with hope. He should

vote against the proposition of the gentleman from Albemarle. He had understood the gentleman from Goochland, had consented to vote for his own proposition.

Mr. Pleasants denied having given such an assurance.

Mr. Cooke made an explanation, corroborating the statement of Mr. Pleasants.

Mr. Pleasants said, that he had declared, that if he could not get a graduated system of county representation to suit him, he might possibly accept of the other; but that he was so situated with respect to his district, that he did not know if it would have been in his power. He had expressly said at the meeting, that he would bind himself to nothing.

Mr. Mercer said, that he had so understood all the other gentlemen: he never had been any where that he would consent to be bound. He had the public assurance of the gentleman from Northampton, (Mr. Upshur,) that he was not satisfied with a Senate of thirty-six, and that if forty was moved, he should sustain it. He had, therefore, counted upon that gentleman's support. He had also reckoned upon the venerable gentleman from Orange, (Mr. Madison,) and very confidently on the support of the gentleman from Richmond, (Mr. Marshall.) He had now, however, witnessed one equal division of the House on a Senate based upon the Federal number, and a House of Representatives upon the white basis. And this was the moment gentlemen had chosen to despair—on him it had a very different effect.

If, indeed, he could believe with his friend from Frederick, (Mr. Cooke,) and his colleague, (Mr. Henderson,) who had conjured up such frightful phantoms before their own imagination and that of the Convention, then, indeed, he would give gentlemen a *carte blanche*, and they might write any Constitution that they supposed would remedy the evil; but he could believe in no such thing. In his country, certainly he had never heard of such an idea. There had been, he believed, some meetings of the non-freeholders, but nothing was to be apprehended of a violent character. The question was to be settled, not by alarm, but by sound judgment. The gentlemen seemed to suppose, that they were not fixing on any basis of Representation, because this apportionment was called an arbitrary one. It was not arbitrary—a principle of apportionment was at the bottom of it. And if it was intended to sink the question in dispute, it certainly failed of its object. Where must the resort be made, to discover the principles on which it was founded? To the Census of the State. And did gentlemen suppose, that their constituents would not or could not resort to the Census too? They had gained nothing on that score. He granted, that when the Constitution should come before the people, it would be hard to say on what basis it was founded.

It was not on the white basis, nor on the black basis, nor on a money basis. But did they suppose this would satisfy the people? Were they likely to remain contented? He said no; and he believed that gentlemen deceived themselves, if they thought that the great question would be settled by the present Convention.

Mr. UPSHUR then spoke as follows:

Mr. President,—I should not trespass on the patience of the Convention at this late hour, if it were not for the direct allusion which has been made to me, by the gentleman from Loudoun, (Mr. Mercer.) That allusion renders it proper, if not absolutely necessary, that I should ask your attention for a few minutes. The gentleman, after having assigned reasons for calculating with certainty on the support of the gentleman from Richmond, (Judge Marshall,) and the gentleman from Goochland, (Mr. Pleasants,) concluded his remarks with an intimation, that I also had brought myself within the reach of his reasonable hopes. He founds these hopes upon an expression which escaped me some three weeks ago, while this subject was under consideration in Committee of the Whole, an expression not used in the course of argument, but incidentally only. The gentleman, however, has never lost sight of it, and he has just told us, that he considered it as authorising him to calculate on my support of the measure which we have just rejected, under all possible circumstances, and in every conceivable condition of things. With what justice or reason he has cherished these hopes, a very brief review of the facts of the case will enable you to determine.

It is needless to advert to the efforts which were made by me, to bring about a compromise of our differences with reference to this question, before the strength of parties should be tested by any direct vote. Suffice it to say, that my wishes were met, and my efforts were of course unavailing. By a majority of two, the free white population was adopted as the basis of Representation in the House of Delegates. But the question was still unsettled as to the Senate, and it was extremely doubtful, whether or not the East would be able to carry its principle into the organization even of that House. I was myself extremely anxious to succeed in this measure. Believing that the House of Delegates was forever lost to us, I was eager to grasp at any thing which promised security, even though imperfect and precarious to those Eastern interests which we all considered to be most in danger. I believed it to be better to gain a little—however little—than to lose all; and I am of the same opinion still. In

the mean time, however, the views of parties had begun to change. The gentleman from Goochland, (Mr. Pleasants,) who had all along voted with the majority, had become uneasy at the distracted state of our councils, and had brought forward his proposition for a Senate arranged on Federal numbers, as a measure of compromise. But it was now too late. The East had looked warily into the subject, and it had become a serious question with a large majority of that delegation, whether they ought to accept of such a Senate or not. A few of them, and myself among the number, thought that we ought, for we considered it wiser, in the present state of public feeling, to submit even an exceptionable Constitution to the people, than to dissolve the Convention without doing any thing. But we all contemplated *not merely* a Senate on the basis of Federal numbers, or some other basis equally favorable to us, but we looked also to additional guards and securities. The gentleman from Fairfax, (Mr. Fitzhugh,) had submitted his guarantees against unequal taxation, which were still undisposed of, and which were in the contemplation of every Eastern member who had reconciled himself to such a Senate at all. In this state of things, the question came up for consideration. The gentleman from Fauquier, (Mr. Scott,) proposed a Senate of forty-eight, based on taxation alone, and possessing concurrent Legislative powers with the House of Delegates. This, it is believed, would have been acceptable to every Eastern member, but it was lost, *the universal Western vote being against it*. We then proposed a Senate of thirty-six, upon a different basis, but it was lost, *the universal Western vote being against it*. A Senate of thirty or thirty-two was then proposed, and before the question was taken, the gentleman from Brooke, (Mr. Doddridge,) gravely proposed the number of the existing Senate, twenty-four! That gentleman knew, as every other gentleman knew, that no Eastern member would agree to accept of a Senate organized upon any principle whatever, without a considerable increase in the number of that House. But this was not all. That same gentleman had declared on that occasion, or a few days before—the time is of no consequence—that his votes on the question of suffrage had been given with express reference to this subject. Such a Senate as we asked was odious to him, and he had voted for the least limited extension of the Right of Suffrage, with the express view of rendering that Senate useless and unavailing. This object was to render it either inoperative in practice, or very short in duration. Sir, when things of this sort were acting before my eyes, by gentlemen who professed to be in search of fair compromise, and who calculated on my support to their measure, I thought it high time to undeceive them. It was then that I told them, that all these attempts were worse than idle; that although they did not mean to mock us, yet that we should assuredly regard their offers as the worst of mockery, if they did not indicate some desire to render those offers acceptable to us, and that the course they were pursuing would have the certain effect of driving from them even those among us, who were then best disposed to their measures. I added also, with very little of the caution of the diplomatist, I admit, for I have no concealments, neither in Parliament nor out of it, that so far as I myself was concerned, I would prefer a Senate of forty-eight, but that I might agree to one of thirty-six, and would not agree to any less number. This is the remark alluded to by the gentleman from Loudoun, and these the circumstances under which it was made. The gentleman now offers us a Senate of thirty-six—he gives us one *number*, but he loses sight of that increase of Legislative power, which was contemplated in the proposition of the gentleman from Fauquier, and of the equally valuable guarantee of the gentleman from Fairfax! An expression of my willingness to accept a Senate of thirty-six, but with a reference irresistibly implied to all the guards and securities which were then before us, and considered in direct connection with it, has been construed into something like a pledge, that I would accept of a Senate with that number *only*, *without* either guard or security!!

But, there is yet another part of the history of this subject, which deserves to be mentioned. Even after the declaration above alluded to was made, no farther vote was taken upon the question. No Western gentleman ever announced his willingness to vote for a Senate of thirty-six, either with or without guards and securities, but the Committee rose, without coming to any resolution in regard to it. The subject was not again taken up for many days, nor until Western gentlemen had held no less than three meetings of their friends, in order to determine whether they would go even as far as they *now* propose, or not. In the mean time, the attention of Eastern members had been turned to other plans of compromise. The gentleman from Albemarle had submitted the scheme now before us—the gentleman from Chesterfield had submitted another—I had myself submitted a third, and the gentleman from Richmond had presented calculations for a fourth. Each and every one of these measures was more acceptable to the Eastern delegation, than the House of Delegates on the white basis, and the Senate on every other basis that could be devised; measures which we had carefully prepared, and committed ourselves to support, while the gentleman from Loudoun and his friends were deliberating whether they would give us a feeble and inefficient Senate of thirty-six members, or not. They finally

determined that they would make us the offer, but never until it was fully ascertained, that we could get all that they offered us and more, without any assistance from them. And yet under all these circumstances, after the backwardness and reluctance of Western gentlemen to meet us on the terms of compromise, proposed by the gentleman from Goochland, had forced us upon other expedients, after we had committed ourselves to our friends, and to the country at large, to advocate and sustain those expedients with all our powers. While those very expedients were yet before us undisposed of, the gentleman from Loudoun has flattered himself with the hope, that we should consider ourselves under a pledge to retrace our steps, to abandon all our own favourite projects, and to accept another, which we had never looked to but as a last alternative, and which was never offered to us, until it could no longer be withheld! Whether the gentleman, in entertaining this extravagant expectation, has deceived himself, or been deceived by others, you, Sir, and others who hear me, may determine.

But, Sir, whatever may have been the favour with which we at first regarded the measure to which the gentleman is now so anxious to bind us, he has himself, given us the best possible reasons for looking more narrowly into the matter. If we have become somewhat more distrustful than we were at first, we owe our additional caution to the gentleman's own admonitions. Remember, Sir, that this measure is offered us under the name of *compromise*; an agreement founded upon mutual, if not equal concession. None of us have forgotten the masterly argument of the gentleman from Richmond, (Judge Marshall,) upon this subject. He endeavoured to shew, that to give the Senate to the East and the House of Delegates to the West, was not an *equal* compromise, and that the very gentlemen who offered it, did not consider it equal. "If they do consider it equal," (said he) "why will *they* not take the Senate and give us the House of Delegates?" The gentleman from Loudoun, in reply to this question, no Sir, not in *reply* to it, for it is one of those home questions which admit of no reply, in endeavouring to evade the force of it, told us that *equality* was not what we asked for; that protection and security were the utmost that we had ever demanded. The same idea has been reiterated by the gentleman from Brooke, (Mr. Doddridge.)

Now, Sir, will gentlemen be pleased to tell me, whether they believe that we should be "secure" or not, if both branches of the Legislature were based on white population? They may answer the question as they please. If they think that we should *not* be "secure," then they meant us injustice when they so strenuously contended for that basis, and of course we were right on that question. If on the other hand, they think that we *should be* "secure," then what do they concede to us, when they offer us the Senate? They will doubtless disclaim, as they may truly disclaim, all idea of intentional injustice, and then, the conclusion is inevitable, that in offering us the Senate, they offer us no more than they themselves believe, we fully enjoyed before. Is not this a perfectly original idea of a compromise? a compromise which neither concedes nor abandons anything whatever!! Nay more. A compromise which proposes to give us, as an equivalent for a total abandonment of our political principles and political power also, *security* for our property, against unjust or unwise legislation; a compromise which exacts every thing from us, and gives us no more than belongs, of absolute right, to every human being in the world? It is from this view of the subject, that I have repeatedly refused to debate the *terms* of this proposition. I can never recognise it as a compromise at all. And surely, Sir, no better reason can be required than is here presented, for refusing *now*, a measure which appeared so plausible, before its own friends had stripped it of its disguise. When we claimed the Senate and struggled to gain it, we considered it of value, because we believed that it would give us political power; and then it was refused to us. And now it is offered to us, and it is insisted that we are bound to take it, after gentlemen have proved to us that it gives no power at all; that they never intended that it should give any thing more than "security," and that even in point of "security," it gives us no more than we had without it. Under these circumstances the gentleman from Loudoun may measure the reasonableness of his expectations, by his own estimate of our intelligence and watchfulness.

The final question was now, at length, put on agreeing to Mr. Gordon's compromise, and decided in the affirmative by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Henderson, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—55.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of

Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell and Stuart—41.

So the Convention, by a majority of fourteen votes, decided to adopt the following arrangement on the subject of representation in the Legislature, viz:

Resolved, That the representation in the Senate and House of Delegates of Virginia, shall be apportioned as follows:

"There shall be thirteen Senators west of the Blue Ridge of Mountains, and nineteen east of those Mountains:

"There shall be in the House of Delegates one hundred and twenty-seven members, of whom twenty-nine shall be elected from the district west of the Alleghany Mountains; twenty-four from the Valley between the Alleghany and Blue Ridge; forty from the Blue Ridge to the head of tide-water, and thirty-four thence below."

The Convention then adjourned—(at near five o'clock.)

MONDAY, DECEMBER 21, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Welsh of the Baptist Church.

The Convention returned to the consideration of the report of the Legislative Committee.

The first resolution was read as follows:

Resolved, That in the apportionment of representation in the House of Delegates, regard should be had to the white population exclusively."

Mr. Scott moved to lay it on the table, (the plan of Mr. Gordon having been adopted on Saturday, which in effect supersedes it.)

Mr. Doddridge demanded the ayes and noes, and they were taken as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Droingoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—49.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell and Stuart—44.

The second resolution was then read as follows:

Resolved, That a Census of the population of the State, for the purpose of apportioning the representation, should be taken in the year 1831, the year 1845, and thereafter at least once in every twenty years."

Mr. Stuart of Patrick, moved to amend this resolution by substituting the following:

"That in order to provide for the future equalization of representation, the Legislature shall, in the year 1840, and every ten years thereafter, make provision by law for ascertaining the whole number of qualified voters within the Commonwealth; and shall apportion the representation among the four districts following, to wit: First, The country west of the Alleghany. Second, The country between the Alleghany and the Blue Ridge. Third, The country between the Blue Ridge and tide-water; and Fourth, The country thence below, according to the number of qualified voters contained in each district respectively: and shall, in distributing the members to which each of said districts shall be entitled, secure, as far as possible, at least one member to each county: *Provided*, That the number of the House of Delegates shall never exceed one hundred and forty, nor that of the Senate, thirty-six."

Mr. Stuart, not wishing to bring on the discussion at this time, moved to lay this amendment on the table. He had offered it, he said, as presenting a scheme for future apportionment; and he hoped that other gentlemen, having propositions intended to effect the same object, would bring them forward, that the Convention might have the whole field before them.

Mr. Scott said he should vote to lay the gentleman's resolution on the table, but candor required him to apprise the mover, that he should vote against taking it up again. If the gentleman had not made the motion, he should have made it himself.

After the very decided vote of Saturday, any attempt to bring up that subject again, could tend only to mischief.

The motion was agreed to.

Mr. Sumners said he had voted to lay the resolution on the table, but he should vote to take it up whenever the mover should think it advisable. He expressed his hope of some arrangement yet being gone into, in relation to a future apportionment of representation. When that hope should forsake him, all expectation of good from this Convention would depart with it.

He moved the printing of the amendment, which was ordered accordingly.

The 3d, 4th, 5th, 6th, 7th and 8th resolutions were then read as follows:

"*Resolved*, That the Right of Suffrage shall continue to be exercised by all who now enjoy it under the existing Constitution: *Provided*, That no person shall vote by virtue of his freehold only, unless the same shall be assessed to the value of at least dollars, for the payment of taxes, if such assessment be required by law; and shall be extended, 1st, to every free white male citizen of the Commonwealth, resident therein, above the age of twenty-one years, who owns, and has possessed for six months, or who has acquired by marriage, descent or devise, a freehold estate, assessed to the value of not less than dollars, for the payment of taxes, if such assessment shall be required by law: 2d, or who shall own a vested estate in fee, in remainder or reversion, in land, the assessed value of which shall be dollars: 3d, or who shall own, and have possessed a leasehold estate, with the evidence of title recorded, of a term originally not less than five years, and one of which shall be unexpired, of the annual value or rent of dollars: 4th, or who for twelve months next preceding, has been a house-keeper and head of a family within the county, city, borough or election district, where he may offer to vote, and who shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same: *Provided, nevertheless*, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, sailor or marine, in the service of the United States, nor by any person convicted of any infamous offence, nor by citizens born without the Commonwealth, unless they shall have resided therein for five years immediately preceding the election at which they shall offer to vote, and two years preceding the said election, in the county, city, borough or election district, where they shall offer to vote, (the mode of proving such previous residence, when disputed, to be prescribed by law,) and shall possess, moreover, some one or more of the qualifications above enumerated.

"*Resolved*, That the number of members in the Senate of this State ought to be neither increased nor diminished, nor the classification of its members changed.

"*Resolved*, That the number of members in the House of Delegates ought to be reduced, so that the same be not less than one hundred and twenty, nor more than one hundred and fifty.

"*Resolved*, That no person ought to be elected a member of the Senate of this State, who is not at least thirty years of age.

"*Resolved*, That no person ought to be elected a member of the House of Delegates of this State, who is not at least twenty-five years of age.

"*Resolved*, That it ought to be provided, that in all elections for members of either branch of the General Assembly, and in the election of all officers which may be required to be made by the two Houses of Assembly jointly, or in either separately, with the exception of the appointment of their own officers, the votes should be given openly or *viva voce*, and not by ballot."

These resolutions having been already acted upon, were passed by.

The 9th resolution was then read as follows:

"*Resolved*, That no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain their opinions in matters of religion; and that the same shall in no wise diminish, enlarge or affect their civil capacities.

"That the Legislature shall have no power to prescribe any religious test whatever, nor to establish by law any subordination or preference between different sects or denominations, nor confer any peculiar privileges or advantages on any one sect or denomination over others, nor pass any law, requiring or authorising any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or the support of any church or ministry; but that it be left free to every person to select whom he pleases as his religious instructor, and to make for his support such private contract as he pleases: *Provided, however*, That the foregoing clauses shall not be so construed, as to permit any Minister of the Gospel, or Priest of any denomination, to be eligible to either House of the General Assembly."

The question was taken on the first paragraph, and decided unanimously in the affirmative. (And it was so recorded.)

The question being then put on the second paragraph,

Mr. Henderson moved to strike out the proviso, (which inhibits the election of Priests and Ministers of the Gospel to the Legislature.)

Mr. H. put his motion on the ground of principle. It was a conviction of his mind which he could not yield even to the views of his constituents. He considered such resolution directly at war with the principles laid down in the previous part of the resolution.

Mr. Clopton demanded the ayes and noes, which were ordered.

Mr. Giles, in a short speech, pressed those two points, that ministers were taken from among the people by the possession of two important privileges: 1st, the license to preach; and 2d, the exemption from military duty. This made them a peculiar and privileged order. If those privileges were taken away, it might be more fair to admit them to political privileges, though on that point he gave no opinion.

Mr. Campbell of Brooke suggested, that these objections applied with equal force to justices of the peace, and nobody contended for excluding them.

The question was then taken by ayes and noes as follows:

Ayes—Messrs. Clopton, Madison, Mercer, Henderson, Cooke, Donaldson, Pendleton, Summers, See, Doddridge, Morgan, Campbell of Brooke, Claytor and Saunders—14.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Fitzhugh, Osborne, Griggs, Mason of Frederick, Naylor, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—81.

So the Convention refused to strike out the proviso, which excludes ministers of the Gospel from the Assembly.

The last paragraph of the resolution was agreed to without debate.

The 10th and 11th resolutions were then agreed to as follows:

Resolved, That no bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts, ought to be passed.

Resolved, That private property ought not to be taken for public uses, without just compensation."

The 12th resolution being read as follows:

Resolved, That the members of the Legislature shall receive for their services a compensation to be ascertained by law, and paid out of the public treasury; but no law increasing the compensation of members of the Legislature, shall take effect until the end of the next annual session after the said law may have been enacted."

Mr. Claytor moved to amend it, by striking out the word "end," and inserting the word "commencement." But on a suggestion by Mr. Coalter, that the object was to prevent the Legislature from being under the bias of an increased salary, when they gave their vote,

He withdrew his amendment, and the resolution was agreed to.

The 13th and last resolution was then read as follows:

Resolved, That no Senator or Delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as may be filled by elections by the people."

The House agreed to the resolution, and thus completed its action on the report of the Legislative Committee.

Mr. Scott now moved the following:

Resolved, That no member of the Legislature shall, during the period for which he shall have been elected, be appointed to any office, the appointment to which is made by the Legislature."

Mr. Morgan said he was opposed to the amendment of the gentleman, (Mr. Scott,) because he believed its obvious tendency would be injurious. If the Assembly be prohibited from appointing its own members to office in all cases, or, in other words, if the members shall be rendered incapable of being so appointed, they will be induced by law to give the appointment to the Governor, of all the great officers of State, whose appointments shall not be fixed in the Constitution. This would very much increase the Executive power, and from hope of office, directly tend to make the members of Assembly subservient to the Governor, which ought to be avoided. He thought

the power of appointment much safer in the hands of the Assembly, than of the Executive.

Mr. Summers was opposed to the resolution, and asked for the ayes and noes.

Mr. Leigh suggested two objections to the measure: It would keep all persons ambitious of the leading offices of the State, from entering the Legislature at all, and it would injuriously narrow the ground of choice to fill them.

Mr. Scott did not admit the force of these objections. He thought the Legislature was, in general, the road to political honors, and that nothing would deter ambitious men from entering it. Though the latter objection might be true in theory, yet in practice, he thought the rule would work the other way.

Mr. Bayly opposed the resolution. He said he was not disposed to restrict the General Assembly in any manner, so as to prevent them from filling the civil or military offices of the State, by the appointment of the most capable men. If, however, no man was to receive an appointment to an office, during the period he should be elected a Legislator, such a restriction might induce citizens, well qualified to be chosen to make laws, from accepting a seat in the House of Delegates, or Senate. For, although honorable men will not often seek office, yet it ought not to be expected that they should be willing to disqualify themselves from holding offices of honor, trust or profit, for no other reason than that the people, without solicitation, should honor them with their confidence to be a member of the General Assembly, and that they should accept and aid in making laws. By the institutions of Maryland, the Senate is elected by electors, for five years, and during that period they cannot receive any other appointment under the State. The consequence is, that resignations often take place, and one-third or one-half of the Senate have not been elected by the electors of the people; for, all vacancies in that body are filled by the Senators themselves. He had often heard the exclusion of the Senators from office, during the period of their election, complained of in Maryland, and he did not wish to see such restriction introduced in the Constitution of Virginia.

The question being taken by ayes and noes, the resolution was rejected as follows:

Ayes—Messrs. Barbour, (President,) Moore, Beirne, Madison, Stanard, Mercer, Henderson, Cooke, Pendleton, Duncan, Scott, Macrae, Tazewell and Rose—14.

Noes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Holladay, Fitzhugh, Osborne, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Green, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Coalter, Joynes, Bayly, Upshur and Perrin—81.

Mr. Campbell of Brooke, moved the following:

Resolved, That no incorporation for any ecclesiastical or religious purpose, shall ever be granted, or have validity in this Commonwealth."

The resolution gave rise to a debate almost the counterpart of that which took place in Committee. The resolution was supported by the mover, on the ground that religious incorporations tended to build up religious establishments, and had produced those establishments in miniature: that religion needed no external aid, and was injured by the alliance of wealth, &c. &c.

It was opposed by Mr. Marshall, Mr. Naylor, Mr. Nicholas, Mr. Brodnax and Mr. Stanard, as going a great deal too far in the extent of its terms; as depriving religious societies of the means of securely holding their own property; as making a needless and unjust distinction between them and other associations; as being utterly needless from the light of the age, and the utter averseness of every American Legislature to do any act tending to build up religious establishments or confer exclusive privileges on religious sects, &c.

Mr. Nicholas observed, that he agreed to a considerable extent, with the gentleman from Brooke, (Mr. Campbell,) in his views on this subject, but he thought his resolution went farther than he could go with him. He said, that he had an unfeigned respect for religion, though he feared he did not possess as much of it as he ought. He agreed with the gentleman from Hampshire, (Mr. Naylor,) that religion was founded on virtue, and that both combined, were essential to the prosperity of a nation—Government should not give any preference to one sect over another, and the true way of managing sects was to let them alone, so far as the Government was concerned. Each ought to be protected in the undisturbed exercise of their religion.

He would, if a member of the Legislature, be willing to incorporate societies, so as to enable them to hold, and protect their property in their churches, and the necessary appurtenances thereto; but would not consent to grant such incorporations for holding

property generally. He thought there were strong objections to such a comprehensive power. At present a discretion was vested in the Legislature on this subject, and they had shewn no disposition to abuse it. He was disposed, therefore, to leave the subject as it was placed by the present Constitution.

Mr. Brodnax was induced to move by way of amendment, what he had offered in Committee, in relation to the incorporation of theological seminaries, with a proviso for re-modeling or revoking their charters at pleasure. His amendment was as follows:

"The Legislature shall have the power of incorporating by law, trustees or directors of any theological seminary, or other religious society, or body of men united for charitable purposes, or the advancement of piety and learning, so as to protect them in the enjoyment of their property and immunities, in such cases, and under such regulations as the Legislature may deem expedient and proper. But the Legislature of this State, during all future time, shall possess the power to alter, re-model, or entirely repeal such charters or act of incorporation, whenever they shall deem it expedient."

The debate was terminated by a motion of Mr. Stanard, that the resolution, together with the amendment, be indefinitely postponed.

This motion was carried by ayes and noes, as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Dromgoole, Alexander, Marshall, Nicholas, Anderson, Coffinan, Harrison, Baldwin, Johnson, Moore, Beirne, Smith, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly and Perrin—77.

Noes—Messrs. Brodnax, Goode, Tyler, Clopton, Williamson, M'Coy, Baxter, Madison, Cooke, Boyd, Pendleton, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Macrae, Gordon and Upshur—19.

The House then proceeded to the consideration of the report of the
EXECUTIVE COMMITTEE.

The first resolution, as amended in Committee of the Whole, was then read as follows:

"*Resolved*, That the chief Executive office of this Commonwealth ought to be vested in a Governor, to be elected by the General Assembly for three years, and to be ineligible for three years thereafter. His term of office shall commence on the first day of January succeeding his election, or on such other day as the Legislature may from time to time designate."

Mr. Mercer moved to amend it, by striking therefrom the words "General Assembly," and inserting in lieu thereof, the words, "qualified voters for the most numerous branch of the State Legislature."

Mr. Stuart moved to lay the resolution and amendment upon the table.

He said he had come to the Convention determined to give the election of Governor to the Legislature; but the question of future apportionment of representation had a bearing on his final determination; if no plan for future apportionment was to be permitted, then he should go for giving the election of Governor directly to the people.

The question of laying the resolution on the table was taken, and decided in the negative: *Ayes* 47, *Noes* 48.

The question was then taken on the amendment of Mr. Mercer, and decided in the affirmative by ayes and noes, as follows:

Ayes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Bayly and Upshur—50.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Pleasants, Massie, Bates, Neale, Rose, Coalter, Joynes and Perrin—46.

The question then recurring on the amendment of the Committee, as amended on motion of Mr. Mercer,

Mr. Doddridge demanded the ayes and noes, and they were taken accordingly as follows :

Ayes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Matthews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Bayly and Upshur—50.

Noes—Messrs. Barbour (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Pleasants, Massie, Bates, Neale, Rose, Coalter, Joynes and Perrin—46.

The question, finally, recurring on the resolution as thus amended,

Mr. Doddridge again demanded the ayes and noes. They were taken and stood as follows : Ayes 50, Noes 46. [Vote same as above.]

The second resolution was then read as follows :

Resolved, That there ought to be appointed a Lieutenant-Governor of this Commonwealth, to be elected in the same manner, at the same time, and for the same term with the Governor."

The Committee's amendment was agreed to : Ayes 50.

Mr. Scott now moved to strike out the whole resolution as amended, and to substitute the following :

"An Executive Council, consisting of three members, shall be chosen by joint vote of both Houses of Assembly, to remain in office three years. In case of the death, inability, or absence of the Governor from the Government, the eldest member of the Council shall act as Governor. Two members shall be sufficient to form a quorum. Their proceedings shall be entered of record, and signed by the members present, (to any part whereof any member may enter his dissent,) and lay it before the General Assembly when called for by them. This Council may appoint their own Clerk, who shall have a salary settled by law, and shall take an oath of secrecy in such matters as he shall be directed by the Board to conceal. At the end of one year from their first appointment, one Councillor, to be designated by lot, shall go out of office, and the vacancy shall be supplied by a new election. At the end of the second year, another Councillor, to be designated in like manner, shall go out of office, and the vacancy be supplied by a new election : and this rotation shall be continued in due order annually. The Executive Council shall stand in the same relation to the Governor, as the Council under the existing Constitution, (*except that they shall advise merely, and not controul him.*)

Mr. Scott very briefly stated the leading principles of the amendment.

Mr. Leigh opposed its adoption. He made some remarks on the very extraordinary situation of the Convention, when the members of a single district (that of Albemarle) held the fate of every measure in their hands, and by inclining to one side or the other of the House, could give an affirmative or negative vote of the Convention at their pleasure. Yet, gentlemen seemed just as willing to recommend a Constitution, if its provisions were carried by a majority of one, as if the whole body had voted for them. He expressed his astonishment, that gentlemen who agreed with him and his friends, in voting against the white basis, should so far play into the hands of their adversaries on that great question, as to enable them to take all other measures they desired, and none of which they could carry by their own unaided strength. He contended, that the argument for such a Council as Mr. Scott proposed, was, if not wholly changed, greatly impaired by the vote which had given the election of Governor to the people. Such a Council would only embroil the proceedings of the Executive. He should have hoped his friend from Fauquier would have been the last man to propose a mere advisory Council, after that vote had so materially changed the state of things. He must, with whatever hesitation or reluctance, vote against the amendment.

Mr. Nicholas moved to amend the amendment, by striking therefrom the words "except that they shall have power to advise merely, and not to controul him."

Mr. Scott declaring, that he would be the last man to break the ranks that were opposed to the white basis, consented, though with an expression of reluctance, to give up the veto, (*the words in Italics*), and accept of Mr. Nicholas's amendment as a modification.

Mr. Claytor demanded a division of the question, on striking out and inserting, and it was divided accordingly.

And the question being on the motion to strike out the 2d resolution, as amended by the Committee of the Whole,

Mr. Stuart, in reply to Mr. Leigh's expression of surprise at the votes of gentlemen on minor questions, who were opposed to the white basis, expressed in turn his surprise, that no vote could be given, without incurring the imputation of drilling. The gentleman had not, indeed, yet pointed out who was the Sergeant, nor had he particularised the troops. Mr. S. vindicated the vote he had given to put the election of Governor into the hands of the people. He had been driven into that measure, because all efforts to give the people their due representation in the Legislature, had been steadily resisted; and unless that was done, he had told gentlemen he should never vote to give the Legislature the election of Governor. The gentleman had no right to expect, that the white basis question was to carry all other questions along with it. He spoke this, not in his own defence, for he was no deserter from that gentleman's side, but he spoke in behalf of others, who had given independent votes. All who had agreed with the gentleman from Chesterfield, on the question of the basis, were not therefore bound to vote with him on every point in the whole Constitution. Many who advocated a mixed basis, had nevertheless always been in favour of the election of Governor by the people.

Mr. Nicholas said, that the question was not varied by having been divided; for, as the provisions in the resolution were incompatible with those in the amendment of Mr. Scott, all who were in favour of the latter, would of course vote to strike out. The election of a Lieutenant-Governor by the people, varied the question as to the Council. All who wished for a Council, would be for striking out that feature of course. Mr. N. then went into a comparison of the expense of the two plans, and expressed his decided preference for that of Mr. Scott.

Mr. Mercer contended, that the present motion should be considered as in effect a motion to strike out and insert, and as involving, in fact, a comparison between the two plans proposed. Much had been said about tactics and management, but he saw no evidence of it. He claimed no power over the opinions or course of others, nor did he recognize any such right as existed in any one over his own. He was for abolishing the Council altogether, and for electing the Governor by the people. He was of course opposed to striking out.

Mr. Tyler said he had, after much reflection, brought himself to vote in Committee of the Whole, to abolish the Executive Council. He had not at that time explained his motives, believing he was able satisfactorily to account for his course to his own constituents. But when he had given that vote, it was on the hypothesis that the Governor was to be elected by the Legislature. He saw no danger attending the plan—he had apprehended nothing from the effect of patronage in the hands of such an Executive. But, the moment the election of Governor was to be thrown into the hands of the people, he was led to a very different course. Under such circumstances, he was opposed to increasing, by one iota, the power and influence of that officer. If there was the slightest infusion of what had been denominated, by an eloquent member of this body, "a spice of Monarchy," into the nature of the Governor's office, his election would cause violent throes and convulsions in the State. The plan became an object worth striving for—competitors would start up in all parts of the Commonwealth, and great political excitement must be the unavoidable consequence.

Mr. Leigh would add one word more on the subject of the Council, and he hoped it would be the last he should have to utter there on that subject. When he had first begun to examine the Constitution of Virginia, he had had great objections against this feature of it; but, more experience had convinced him, that instead of being in practice pernicious, it was a most valuable provision of political sagacity. It was this experience which had overcome his early prepossessions, and the Council had been growing on his esteem to the present day. He should not say any more in favour of it—he had already said all he knew, and all that he was able to say of it, when in Committee of the Whole. After having bestowed long, he would not say profound reflection, but certainly long and very anxious reflection upon the subject, he was at a loss to imagine how the Governor was to get along without a Council. He supposed he was to be aided by Heads of Departments, eligible by others, and independent of the Executive. He asked gentlemen to observe the consequence that must follow, after the Council should have been abolished, and the Executive power should be exercised by the Governor alone. There must be revision, immediately, of almost every law in the Code—all the laws passed since the revolution, would have to be revised. The magnitude and difficulty of such a task, were obvious to all. If there were to be Departments, then, during the first year after any Governor should have been elected, though he might be called Governor of the State, the mind of a Governor would not be there. The moment he got into office, the first task he must perform, would be to muster all the papers pertaining to the office, and how long did

gentlemen suppose it would take any man to get through with such a work as that? The worthy gentleman from Goochland, (Mr. Pleasants,) knew the truth of this representation. But, he was to have Departments to help him. There was to be a Secretary of State, a Secretary of the Treasury—and what others? A Secretary of the Navy, he presumed; and a Secretary of the Board of Works, or of Internal Improvements, probably. And gentlemen were willing to create all these, for the sake of getting rid of the Council. In reply to Mr. Tyler, he said, that he had observed, to his infinite surprise, that that gentleman did vote in Committee of the Whole for the abolition of the Council. He was never more surprised at any thing, after the experience that gentleman must have had upon the subject. There was one thing attending the existing Council, which was worthy of a thought—he meant no disrespect to any gentleman, who had ever filled the office of Governor, when he made the remark—it was this, that if the Governor happened to be of mind superior in vigour to that of his Council, his mind would of course practically direct every thing; but, if it should so happen, that there were in the Council men greatly his superiors, then the strongest mind in the Council would govern. This was the inevitable course of things. Now, in a Council of eight members, there was a greater chance of having some able mind in the Executive office—and be the strength of that mind what it would, the office gave it power for good only, and none whatever for evil.

Mr. Claytor withdrew his call for a division of the question.

And the question being then put on *striking out* the second resolution of the Executive Committee, and *inserting* the amendment of Mr. Scott, it was taken by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—48.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes and Bayly—48.

So the motion was lost.

The question was then taken on agreeing to the second resolution as amended by the Committee of the Whole, and decided by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson Joynes and Bayly—47.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—48.

So the Convention refused to agree to the resolution.

The House then adjourned.

TUESDAY, DECEMBER 22, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Kerr of the Baptist Church.

The question being on agreeing to that amendment reported by the Committee of the Whole which proposes to strike out the word "Resolved" from the fifth resolution of the Executive Committee, (which resolution reads as follows, viz:)

"*Resolved*, That the Sheriffs of the different counties in the Commonwealth shall hereafter be elected by the voters qualified to vote for the most numerous branch of the Legislature."

Mr. Trezvant asked for the ayes and noes: they were ordered by the House, and being taken, stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Holladay, Mercer, Fitzhugh, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Barbour of Culpeper, Scott, Macrae, Green, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Stuart, Pleasants, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—57.

Noes—Messrs. Anderson, Coffin, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, McMillan, Campbell of Washington, Byars, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Gordon, Thompson, Joynes and Bayly—57.

So the House rejected the fifth resolution of the Executive Committee.

They also concurred in the amendment which strikes out the word "Resolved," from the following (sixth) resolution, viz:

"*Resolved*, That the commissioned officers of militia companies be nominated to the Executive by a majority of their respective companies."

The House also agreed with the Committee of the Whole in amending the seventh resolution, which reads as follows:

"*Resolved*, That the field officers of regiments be nominated to the Executive by a majority of the commissioned officers of their respective regiments." By striking out all after the word "Resolved," and inserting in lieu thereof the following, viz: "That the mode of appointing militia officers ought to be provided for by law: Provided, nevertheless, that no officer below the grade of a Brigadier General should be appointed by the General Assembly."

The House further agreed to strike out the word "Resolved" from the eighth resolution, which was in the words following, viz:

"*Resolved*, That no pardon shall be granted in any case, until after conviction or judgment."

The following additions having been reported by the Committee of the Whole to the report of the Executive Committee:

"SECT. 9. The Governor shall have power to nominate, and by and with the advice and consent of the Senate, appoint Judges of the Supreme Court, or Court of Final Jurisdiction, and Judges of such Inferior Courts as may from time to time be established by law; all militia officers from the rank of Colonel inclusive, the Treasurer, Auditor of Public Accounts, Register of the Land Office, and Attorney General. The Legislature may by law vest the appointment of all other officers of the Commonwealth, whose appointments are not herein otherwise provided for, in the Governor, with the advice and consent of the Senate, or in the Courts of Law.

"SECT. 10. The Governor shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of the next session of that body.

"SECT. 11. The Governor shall have power to require in writing the opinion of the Lieutenant Governor, and of the Attorney General, upon all matters appertaining to the duties of his office."

Mr. Claiborne moved to strike out all in the above resolutions which referred to a Lieutenant Governor, (the House having yesterday stricken out the resolution which provides for such an officer.)

But before any determination was had on this motion, the resolutions were, at the motion of Mr. Upshur, laid for the present upon the table.

The Convention now returned to the consideration of the third resolution of the Executive Committee, which reads as follows, viz:

"*Resolved*, That the Executive Council, as at present organized, ought to be abolished, and that it is inexpedient to provide any other Executive Council."

Mr. Scott moved to lay the resolution upon the table.

The motion was opposed by Mr. Powell, Mr. Henderson, and Mr. Fitzhugh; the latter gentleman stating that if it did not carry, he should offer the following amendment:

"There ought to be appointed a Secretary of State, and an Attorney General, who, besides being the Constitutional advisers of the Governor, shall discharge such other duties, as may be assigned them by the Legislature."

Mr. Scott insisted on his motion, being persuaded that a majority of the House were in favor of having a Council in some form: and if those who were for an Advisory Council, would unite with those who preferred a veto on the Governor, they could carry a Council that would be better than none. After some farther conversation be-

tween Messrs. Scott, Powell, Fitzhugh and Doddridge, the question on laying the resolution upon the table, was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—47.

Noes—Messrs. Marshall, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Matthews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Thompson and Bayly—49.

So the House refused to lay the resolution upon the table.

Mr. Fitzhugh now moved to amend the resolution by striking out the words "and that it is inexpedient to provide any other Executive Council," and insert as follows: "There ought to be appointed a Secretary of State, and an Attorney General, who, besides being the Constitutional advisers of the Governor, shall discharge such other duties as may be assigned them by the Legislature."

Mr. Scott demanded a division of the question on striking out and inserting; and it was thereupon divided accordingly: and being first put on striking out,

Mr. Nicholas said, that his former prediction was now verified; for a plan was proposed, which, while it was not so efficient as that of the existing Council, was equally, if not more expensive. The Attorney General was at present the Constitutional adviser of the Governor, on all law questions: if he was to do more than this, he must be paid for it; and besides, his official duties occupied his whole time. As to the Secretary of State, he could not speak with certainty, as he did not know what his functions were to be. If he was to be a mere subordinate of the Governor, a sort of clerk, whom the Governor could command, he would be the last person fit to be entrusted with the duty of being his official adviser.

This officer must have a salary; and here was more expense to be encountered. Besides, there must be a Lieutenant Governor. What was to be done should the Governor die or be sick? Gentlemen would have that case provided for by the Legislature: Here, then, was to be an organic law, which provided no certain means of carrying on the Government. The Constitution was to omit, altogether, an officer, essential to the continuance of any Government at all. When was the Legislature to make this provision? When the emergency happened the Legislature might not be in session. They must at last have a Lieutenant Governor; and he must have a salary, and no small one.

Mr. Fitzhugh declined arguing a question, which had been already so fully discussed. As to the duties of the Secretary of State, it was sufficient to say, that he meant him to do the duty of the present eight Councillors. And in relation to filling the place of the Governor, in case of his death or inability, that duty might be devolved, on either the President of the Senate, or the Speaker of the House of Delegates; or the Secretary of State might act as Lieutenant Governor, *pro tem*.

Mr. Summers said, that this feature of the Constitution had been sustained, with an earnestness of perseverance worthy of a better object. Since the pleasure of this body had been manifested to be, to look to the people, as the source of the Executive authority, this effort had been renewed with fresh vigour. But, he begged gentlemen to recollect, that if a Governor, appointed by the Legislature, could be entrusted without a controlling Council over him, a Governor, coming directly from the bosom of the people, might surely be. The change, in this respect, so far from furnishing an argument for retaining, was the strongest argument for abolishing, the Council altogether.

In reply to the argument that a Council was indispensable to a new Governor, unacquainted with the details of office, he quoted the example of the General Government, and referred especially to the present Executive, who had no Council around him that had been for years in their places to instruct him, yet whose administration was proceeding with alacrity and with the general satisfaction and confidence of the people. It had not been found necessary to have a permanent Council to teach the incoming President his duty; and yet that was a far more arduous and extensive duty than that of a Governor of Virginia. Experience, then, on which gentlemen relied so absolutely as a guide, was here all against them: and went to shew there was not the least necessity for this *incubus* upon the State. The proposed Council would retain the present services of the Attorney General, to which, of course, gentlemen would not object: and it gave the Governor an additional officer to do the duties now per-

formed by the eight Councillors and their Clerk. If the Governor needed still more light, the Commonwealth was open to him: all the intelligence of the State could be consulted: and if that were too little, after all, as a last resort, *Shockæ Hill* remained ready to direct his course, as he presumed it had done heretofore.

Mr. Alexander said, that he found himself compelled to change, on this occasion, the vote he had given when this subject was before under consideration. Through all the course of his Legislative experience, he must be permitted to say that he had never witnessed such proceedings as had marked this body, especially during the last two days. He firmly believed that no political body had ever done more to destroy the principles of free Government than this Convention. (Here Mr. Alexander was reminded by the Chair that it was not in order to reflect upon the course pursued by the body.) Mr. A. said he meant no injurious reflection; but what, said he, do we find? On one day propositions that have been maturely considered, are deliberately decided on; and the very next day the decision is wholly reversed. Yet it was said there were no tactics—no management—no manœuvre. He had come to the Convention not for the purpose of acting with any party, or advancing any mere party interests; he had come to be governed by what was wise and just, to make a Constitution that would prove acceptable to the people by its own merits. With the gentleman from Loudoun, he could say, if there were any objects which he had come to obtain in preference to others, they were these two—to continue the election of Governor as it was provided for by the existing Constitution, and to abolish the Executive Council. But since it had been determined that the Governor was to be elected by the people, he felt it his duty to resort to every means of counteracting an abuse of Executive power. He had thought that while the general provisions of the Constitution exhibited the wisdom of their forefathers, in distributing power so as to render it capable of effecting good only, and not evil, that in the very difficult problem of an Executive, they had partially failed. He had wished for an Executive that could do no more than fulfil the legislative will and further the legitimate ends of the Constitution, and thought that such a Governor needed no Council to control him, but should be left to his naked responsibility. But now a new aspect was given to the question.

There was a remark made by one of the wisest of statesmen, which had always impressed him with great force. When that gentleman was asked how it happened that in the early formation of the Federal Government, gentlemen from the South obtained such an undue degree of influence, he replied that there was no secret in the matter nor any mystery about it: the solution was easy: the Southern members, generally, had come to that Convention acting on virtuous principles, and that so long as that continued to be the case, they preserved a moral force and power, which was strongly felt; but that it would be lost, so soon as they came to act on local and selfish considerations, regarding only the geographical lines, which separated them from others. The truth and wisdom of his remark, had for some time been verified by the state of things, in the General Government; and it seemed likely, in a short time, to be verified by the condition of their own State.

Mr. A. said, he had not risen to make a speech; but merely to explain the principles on which he should act, and with a view to justify himself to the House and to his constituents, who knew the sentiments with which he had left them.

Mr. Mercer, after expressing his great respect for the gentleman who had just taken his seat, regretted that he should have insinuated that any management or tactics had been resorted to in obtaining the vote of yesterday giving the election of Governor to the people: nothing was easier than to account for that vote. The parties at first had been nearly equally divided in sentiment on that point: but some changes had taken place in the body by the resignation of members, among these his venerable colleague, (the cause of whose withdrawal from that body, he felt assured every member of it united with him in deploring) and their successors in some cases differed in their views.

Mr. M. then referred to the doctrines of the *Federalist*, as to placing the Legislative and Executive bodies on the same foundation, and keeping them independent of each other in their own sphere. He was surprised that no gentleman had availed himself of the masterly argument on the subject of a plural Executive which was contained in the 70th number of *Publius*: it was perfectly conclusive, and had led to the abolition of an Executive Council in New York, by an almost unanimous vote. It was easy to explain the vote of yesterday—all the propositions which had been considered were in some degree dependant propositions; and the remark of the gentleman from Norfolk, (Mr. Tazewell,) who never uttered a thought that had not great weight, was perfectly correct, when he had insisted on this very ground, that the whole of those propositions should be placed within the view of the Committee at the same time. If any machinery had been employed in effecting the vote in reference to the election of Governor, he was ignorant of it. He never had (he declared it before Heaven,) voted at any time with a view to make any proposition odious to its supporters. When

he was pressed to vote in Congress for adding the molasses tax to the tariff, with a view to make the bill odious to New England, he had utterly refused to do so: and such should ever be his course.

Mr. Randolph said, that for some time past, he had every day become more and more convinced, that, from whatever cause, this body was utterly incapacitated for the performance of the duty, which had been devolved upon it by the people. I have seen, said Mr. R. with pain and grief, that our proceedings are—in my view—discreditable to ourselves, and injurious to the best interests of the Commonwealth. [Here the Chair reminded Mr. R., that it was a violation of order to make any reflections on the proceedings of the body.] Mr. R. resumed. I do not reflect upon the body: I have all proper respect for it: but I will take leave to say—(under the correction, always, of the Chair, and of the House)—that if the various schemes and projects—(I speak of them as in their present inchoate state)—which have been brought forward in this Assembly, and there are more, I believe, now in embryo, shall be finally resolved upon—a deeper wound will have been inflicted on the cause and principles of free Government, than has been given to that cause and those principles since the days of the French National Convention. I say it deliberately. I was in hopes that before now some gentleman would have moved an adjournment *sine die*. Sir, what have we seen? What a mass of projects has been offered—considered—rejected—re-considered—re-adopted, and then scouted. If you had gone through the Commonwealth, parish by parish, and taken the proposals of every old-field school, you could not have collected such a heterogeneous mass—such a monstrous farrago, as we see gravely proposed to us, by those, who, if they *are* statesmen, should better have digested their own thoughts, and not presented them, in their crude, undigested state, for our adoption. I thought it right to say thus much by way of giving the right hand of fellowship to my old friend and fellow-labourer from Mecklenburg, (Mr. Alexander.) Sir, we are daily losing the confidence of the people: and deservedly losing it. What did we hear about the shocking anomaly of the County Courts filling their own vacancies? When we allow two of our members to return a third—and then a fourth—and then a fifth—till not a shred will be left of the body chosen by the people: we shall become a self-created Assembly, which neither possesses, nor has a right to challenge the confidence of the people. In every respect in which I look at the character and composition of this body, it is obvious, the people cannot confide in it. I declare it openly: and the sooner we return to those who sent us, *re infecta*, the better. I will agree, before we take such a step, to remedy those evils which are most complained of. I will consent to reduce the number of the House of Delegates one-half, and let each county send one Delegate, instead of two. I will consent to reduce the Executive Council to half its present number. I will vote to relieve the Commonwealth from a burden, by removing unworthy, slothful, and incapable Judges from their seats. This will satisfy the public. But, going on as we do, it is impossible—with this lean, staggering, rickety majority—tumbling from side to side, ever to concoct any thing which will commend itself to the good sense of the good people of this Commonwealth.

The question on striking out was now put, and carried without a count.

So the House struck out the words, “it is inexpedient to provide any other Executive Council.”

The question then recurring on Mr. Fitzhugh's amendment,

Mr. Summers asked for the ayes and noes.

Mr. Doddridge, in reference to the remarks of Mr. Nicholas on the salaries of the proposed officers, observed that there seemed to be something in the atmosphere of this city, which occasioned great alarm on the subject of salaries. As long as the old Council was sustained, with its eight salaried Councillors, not a word was heard on the subject. To meet, in part, the difficulty about expenses, he suggested the adoption of a plan long practised in Pennsylvania, by devolving the duties of the Governor, in case of the death of that officer, on the President of the Senate, and let the salary continue to the end of what would have been the Governor's term. In the course of forty years, but one such case had occurred in Pennsylvania; which was on the death of Governor Mifflin, when the office was filled by Mr. Word of Pittsburgh. A similar case had once happened in Ohio, when Othniel Lucar filled the vacancy. Mr. D. explained the duties of Secretary of State, to consist in registering all the official acts of the Executive Department, in preserving the papers, and offering the seal of State, &c. So far as expense was concerned, the proposed plan would be a relief to the Treasury, while the duties of the department would be simplified.

Mr. Leigh suggested to Mr. Fitzhugh, that if the Attorney General was to be made the Constitutional adviser of the Governor in all matters of State, it would be necessary to add a Solicitor General, or a Deputy Attorney General, to perform the duties of his office. The new Secretary of State was to be merely the present Clerk of the Council, with a new name. He submitted the question, whether the Clerk of the Council was a proper Constitutional adviser for the Governor? The very quali-

ties which made him a good Clerk, unfitted him to be a good Councillor, and *vice versa*—he would either be a bad Clerk or a bad Councillor. The business of a Secretary of State was to think—not to write—not to fold and endorse and file papers. The same argument, to a certain extent, applied to the Attorney General. If he devoted himself to affairs of State, he must give up his professional duties. Mr. L. scouted the idea of any saving of expense by the new arrangement—ways and means would always be found to dispose of the revenue. If the whole debt of the United States was paid, the same revenue would still be exacted from the people, and spent in some shape. The Governor's salary must be increased with his duties—so must those of the Heads of Departments. If gentlemen would command mind, they must pay for mind. They did not want a mere right hand, with a pen in it, and an inkstand before it. He expressed surprise, that Mr. Mercer should have alluded to the abolition of the Council in New York. Was it possible that gentleman did not know that they had had two Councils in New York—a Council of revision, and a Council of appointment? And could he suppose they had any analogy to the Executive Council of Virginia? Their name was the only point of resemblance. The Council of appointment had been abolished, because it was corrupt—and the Council of revision, because it had rejected some popular law. He denied, that the argument in the *Federalist* had any application at all to such a Council as that of Virginia. It contained general reflections merely. The gentleman had called that book his political bible, and said it was almost the only book on politics he had ever read, (a short catalogue indeed;) but, he would remind the gentleman of what he had himself said of that work—that it was written in the spirit of an advocate, not of a judge—being intended to persuade the people of the United States to adopt the Federal Constitution. But, would any have the Executive of Virginia like that of the United States? Kentucky had made the experiment, and tasted the consequences. Was Virginia seeking to form an Executive adapted to manage the foreign relations of a great nation? Was an instrument to be formed in the same way, no matter what end it was to answer? Would they attempt to shave a gentleman with a broad-axe, or with the guillotine? It might, indeed, be the very best mode, as the gentleman would never want shaving again. So these gentlemen were for applying the axe to the neck of the State Government.

Mr. L. said, I am not going to say any thing more about the Executive Council. God help me! I sometimes think I am labouring under a partial insanity, and that this must be one of the subjects in which it runs. I hear the evils of this Council talked of, and that not by the enemies of the principle—not by those who are infusing a spice of Monarchy into the Government—but by men, for whose judgment I have the highest respect, and who draw their notions from observation and experience. What those evils are, I have yet to learn—errors there will be—occasional instances of the prevalence of passion—this I am not going to deny. But, when we shall get a Government that is exempt from all error in every one of its acts, then we shall be in that happy condition, which none ever expect to see but the Utopians—and they only when they shall have made men different from what they are—and then they will find that they are as inferior in their schemes of Government, to those who framed our Constitution, as they will find themselves in remodelling the nature of man to God Almighty, who made the human heart and mind. Sir, I am reminded of what the devoted Griffith said to Catherine, the Queen of Henry 8th—"men's evil actions live in brass—their virtues we write in water"—and when the Executive Council shall be dead and gone, and cold in the grave, the gentleman from Loudoun—no—but the gentleman from Fauquier will wish it to have such a Chronicler of its living actions as poor Griffith.

Mr. Upshur now moved to amend the amendment of Mr. Fitzhugh, by substituting the following:

"*Resolved*, That there shall be appointed an Executive Council or Council of State, consisting of four Councillors, to be elected by joint ballot of both Houses of the Legislature. One from the district west of the Alleghany; one from the district of the Valley; one from the district between the Blue Ridge and the head of tide water, and one from the district between the head of tide water and the ocean; who shall choose annually, out of their own number, a President, who shall act as Lieutenant-Governor; and in all respects hold the same relation to the Governor, or perform the same duties, as the existing Council of State hold and perform. Two members shall form a quorum, and in case of an equal division of votes, the Governor shall have the casting vote."

Mr. U. said, the scheme was not yet carried out into all its details—but he offered it, to try the sense of the House as to its important features.

Mr. Mercer expressed his regret at seeing the great natural divisions of the State brought into any plan as connected with political arrangements. He feared the practical effect of this would be to confirm forever those local divisions, and produce a spirit of separate and rival interest among the people inhabiting them. He objected

to a Council, which would sink the Governor so far, as to leave him less power than a high Councillor. He denied the charge of wishing to form a Government without any guide of experience—and he appealed to the example of seventeen States, which were without any Council, in contrast to seven, which had this feature. He denied having ever called the Federalist his political bible, or having said it was the only political book he read; but, he contended, that its language was always to be received *cum grano salis*, remembering for what end they were written. Referring to the doctrine maintained there, that an Executive ought to possess energy, and not be trammelled by a Council, Mr. M. quoted, as being much better than any thing he could say, the entire argument in the 70th number of the Federalist, on the subject of a plural Executive, accompanying it by occasional comments, shewing its applicability to the present measure.

Mr. M. observed, that he had read this long extract for the purpose of shewing that the Executive Council was a vice in the Constitution. As to the argument, that it preserved a record of the motives of the Executive acts, it was false in fact. Those motives could be judged only by the acts themselves—and for his acts, the Governor was responsible, and liable to impeachment.

He expressed his apprehension of an undue influence of the Legislature over the Executive—referred to several instances to shew the disposition to encroachment in that body, and concluded by reference to the 55th number of the Federalist, (written by the very venerable gentleman in his eye,) to shew the danger of placing all the power of the State in the hands of a popular Assembly.

Mr. Claytor asked for the ayes and noes, which were ordered.

Mr. Giles asked to know, whether the Governor was to be elected by a majority, or by a mere plurality of votes? In the former case, there would be caucussing—in the latter, a multitude of candidates, and a Governor elected by a little faction in one corner of the State. Now, there was another project—for a Secretary of State. By whom was he to be appointed? By the Governor? By the Legislature? Or by the people? And in the last case, by a majority or a plurality? All this was left blank; so all his duties were left blank. If the Convention proceeded in this style, it would at length be reduced to the necessity of making an open declaration of its incapacity to form a Constitution, and of then giving a general *carte blanche* to the Legislature. After some reflections on the inchoate state in which projects were presented for deliberation, Mr. G. said, that any impartial person, after reviewing what they had been doing for some days past, must be led irresistibly to the conclusion, that the less this body did the better. He had come to this; that the more projects were presented, the more mischief was likely to ensue—yet he had all respect for the virtue and the talents of gentlemen who offered them. He knew of but one circumstance which entered into the case, and that was, that if they did nothing, they should still have done a great deal. They would then have let alone what wiser men had provided. Their forefathers had done more for them than they seemed capable of doing for themselves.

The gentleman last up, (Mr. Mercer,) had come out with the true object in view: it was to form an *energetic Executive*. That had been obvious for some time. Not content with an Executive that could do no harm, they were seeking one who could do a great deal of harm. "An energetic Executive" was one of the cabalistical phrases, of which the nation had scores—it meant, when translated, power—power in the hands of one man, and uncontrolled. As to the doctrines of the Federalist, which had been read, they had no application to the condition of Virginia; but it was his belief, that that very number of Publius had introduced into the General Government an Executive with energy enough to destroy the liberties of this nation—and it was now busily engaged in cutting up those liberties as fast as possible. What was all the complaint as to the present Executive? Was it not for the exercise of this very energy? And those who complained so loudly of the exercise of this power in the Federal Government, were for paving the way for its introduction into Virginia. The difference between such an Executive as that of the United States and that of Virginia, was in fact the difference between Monarchy and Republicanism.

Mr. G. here went again into an exposition of the constitution of the present Council, and its operation in respect to the Governor; but, as we have fully reported it on a former occasion, we omit it here.

He referred to the last Executive of the United States, and to the sentence of the people, that instead of having done no wrong, he had done all wrong. They had turned him and his all out by the board; and now a minority were endeavouring to do the same by the present administration, all for the exercise of this energy.

He referred to the multitude of schemes proposed—thought the Convention was afflicted with too much light, and overburdened with talents—all their difficulties arose from indulging an *ignis fatuus*, in the shape of the old doctrine of human perfectibility—but concluded with this comfort, that if they had done nothing, they would have done a great deal.

The debate was further continued by Mr. Moore of Rockbridge, who opposed the amendment of Mr. Upshur, as calculated to defeat the object of electing the Governor by the people. Where was the use of this, if a Council was to be placed over him by the election of the Legislature? The argument seems to rest on the incompetency of the people to choose a proper Governor—and so guardians must be put over the lunatic. He was in favor of Mr. Fitzhugh's plan—believing that a Secretary of State, by employing one-fourth of his time, could do more than the Governor and Council now did. He was ignorant of what they did, unless it was to take bad security in a contract about negroes. He had been here for two months, and he could scarcely swear that the Council had any existence—two of the members were gone, and one was here as Clerk—yet all went on as well as usual. He believed them to be utterly useless. As to the Governor, he had been here at the last election, and did not know till the morning on which he was chosen, that he had been named as a candidate. Instead of being chosen by “a little faction in one corner of the State,” he was chosen by a little faction in the Legislature—that was all the difference. If the Convention should do nothing, the people would judge where the blame was to lie. It was a conflict between the people and those in power—and the issue had yet to be decided. The charge of vacillation did not touch him. He had always voted one way on the question—and if some who were opposed to the white basis, had voted to give the election of Governor to the people, the reason was to be found in the sentiments of the districts from which they came.

Mr. Coalter considered the gentleman from Rockbridge, as having pronounced one of the greatest eulogiums that ever was uttered on any Government. He was here during an election of Governor, and did not hear the name of the candidate till the day of the election! How long would this be the case, after the election should have been given to the people? The gentleman said he scarcely knew there was such a thing in being as the Governor and Council. No more did not the gentleman feel the flow of the blood in his veins—and it was a proof of his health that he did not. But let the gentleman be seized with a fever, and then he would soon feel that he had a pulse. It was all Mr. C. desired, to live, and not be conscious how his life was kept up. Political health was the same thing. Mr. Coalter denied that the Attorney General (on whom he pronounced a warm eulogium) could be induced to become a lackey to the Governor, and leave his practice, without a large and adequate salary. They must provide a sinecure for him when he left the office—as he would never leave his lucrative practice, to seek his bread upon the commons. As to the Secretary of State, if he was fit for his place, he must have a Clerk under him. Would he fold papers and wait on every countryman, who came in with apples and wanted some paper certified? Mr. C. insisted on the value of having the advice of Council recorded and all the Executive acts supervised.

He was in favour of the plan of Mr. Upshur. It might limit the range of selection, but it would secure local knowledge, and when strangers came to town from the country, if they had a Councillor for their own district, they would feel less embarrassment in applying to him respecting their business. A raw country lad felt timid in entering the Governor's mansion. One whose shoes were highly polished had entered without rubbing them on the gravel at the door—and treading on waxed floors, found himself in a dangerous situation—took to skating—“cut high-dutch”—and escaped, after throwing down a waiter of tea things. As to the example of New York, if ever he heard a book read containing such charges against Virginia, as had led to the abolition of the New York Council, he should be for quitting the State, and looking out for his safety elsewhere.

The question on Mr. Upshur's amendment, was now taken by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—48.

Noes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes and Bayly—48.

So the amendment was not adopted.

The question now recurring on that of Mr. Fitzhugh, it was modified by the mover, so as to provide for the election of the Secretary of State by a joint vote of both Houses of the Legislature.

The question was then decided by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Thompson, Joynes and Bayly—47.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—49.

So the amendment of Mr. Fitzhugh was rejected.

The resolution was then agreed to in its original form, as reported by the Executive Committee, (see above,) by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Thompson, Joynes and Bayly—50.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—46.

The fourth resolution of the Executive Committee was then read as follows:

Resolved, That in case of the removal of the Governor from office, or of his death, resignation, or inability to discharge the duties and powers of his office, *the said powers and duties shall devolve on the Lieutenant Governor, and the Legislature may provide for the case of removal, death, or similar inability, of the Lieutenant Governor.*

Mr. Doddridge moved to amend it by striking out "Lieutenant Governor," and inserting "the President of the Senate for the time being."

Mr. Randolph, after ascertaining from the Chair that he understood the motion, said: And this we are to do on the principle that we are so outrageously republican, that we cannot trust the Legislature to do by joint ballot what they have been doing for more than half a century. I have always remarked, ever since I have been in public life, that extremes beget each other. We can't trust the whole Legislature to elect by a joint ballot—but we can trust the Senate to elect—acting by themselves.

The Speaker of the Senate—that aristocratic body—and I suppose, if the white basis is to succeed, it will be the negro Senate—he, forsooth, is to be Governor, in case of the death, resignation, or inability to serve, of that officer, which may happen the first month after his election—he is to exercise all the functions of the office. Now, in the name of God—(I ask pardon for taking the name of God in vain—the name of God ought never to be mentioned in this House—it is not a fit place)—if these outrageous theories are to prevail, why not take the Speaker of the House of Burgesses? or why not let them both be Governor? and sit like two Kings of Brentford, in the same chair, smelling to the same nosegay? We have example for it. The Romans chose two Consuls—let one attend to domestic affairs, the other conduct the grand foreign correspondence, of which we have heard, and which is to be carried on by a Secretary of State—thank God he is as yet but a future *rus*. Sir, this whole project carries contradiction and absurdity—yes—absurdity on its face. In other terms—in plain English—it says, that we can't trust both Houses—but we can trust a Senate of twenty-four men, to elect this Governor that may be—without having his fitness for that office before their eyes—but choosing him as their own President. Sir, is it necessary to hold up a candle to the noon day sun? It is only needful to hold this up for what it is—an object of ridicule and scorn.

After some remarks by Messrs. Mercer and Doddridge, the proposition was withdrawn, at the request of

Mr. Powell, who offered the following:

"The General Assembly shall provide by law, upon whom the powers and duties shall devolve."

The question being put on Mr. Powell's amendment, it was adopted—Ayes 52.

The question then recurring on the resolution as amended,

Mr. Tazewell opposed the amendment, as involving a difficulty in its terms. The Legislature could not appoint either the President of the Senate or Speaker of the House of Delegates—because their offices expired with the session. If one of the Judges, was his judicial function to be suspended?

The debate was farther continued by Messrs. Powell, Coalter, Mercer and Tazewell—but before any decision was had, on motion of Mr. Fitzhugh, the House adjourned.

WEDNESDAY, DECEMBER 23, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Taylor of the Baptist Church.

The question pending, was on agreeing to the fourth resolution of the Executive Committee, as amended by Mr. Powell.

Mr. Scott rose and said, that he had some hopes of seeing the Convention relieved from the state of embarrassment under which it had been labouring, and of getting back to that point in its deliberations at which it had resolved that the Governor should be elected by the people. As a means to that result, he moved to lay the present resolution and amendment, for the present upon the table; hoping that some friend who had voted in the majority on that question would move for a re-consideration of the vote.

Mr. Gordon enquired whether laying the present resolution on the table must of necessity precede the motion to re-consider?

The Chair replied in the affirmative.

Mr. Gordon then said, that if the present resolution should be laid upon the table, he would then move a re-consideration.

Mr. Doddridge said, that since the object in view had been distinctly avowed, he should ask for the ayes and noes on the motion to lay the resolution upon the table.

They were ordered by the House, and being taken, stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—48.

Noes—Messrs. Clopton, Anderson, Coffin, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Martin, Stuart, Thompson and Bayly—48.

So the motion to lay on the table did not prevail.

The question was then taken on the fourth resolution as amended, and decided by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffin, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Thompson, Massie, Joynes and Bayly—51.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Pleasants, Gordon, Bates, Neale, Rose, Coalter, Upshur and Perrin—45.

The ninth, tenth and eleventh resolutions of the Committee of the Whole, were then considered. The eleventh read as follows:

Resolved, That it shall be the duty of the Governor to execute, or cause to be executed, all the laws of the Commonwealth; to communicate to the Legislature, at every session, the condition of the State, and to recommend to their consideration, such measures as he may deem expedient. He shall also be Commander-in-chief of

the land and naval forces of the State; shall have power to convene the Legislature, when in his opinion the interests of the State may require it, or on application of a majority of the members of the House of Delegates. To fill vacancies occurring during the recess of the Legislature, in offices, the appointment to which is vested in the Legislative body; to grant reprieves or pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; and to conduct, either in person, or by such agents as the Legislature may designate, all negotiations and correspondence with other or foreign States."

Mr. Fitzhugh moved to amend the eleventh resolution, by striking therefrom the following words, viz: "To fill vacancies occurring during the recess of the Legislature, in offices, the appointment to which is vested in the Legislative body," and to insert in lieu thereof the following:

"To appoint persons to fill the vacancies, occurring during the recess of the Legislature in offices, the appointment to which is vested in the Legislature; provided, that such persons, unless re-appointed shall continue in office, only until the end of the next succeeding session of the General Assembly."

This amendment was agreed to, and the question being put on agreeing to the three resolutions, it was carried.

So the Convention had now gone through the report of the Executive Committee.

Mr. Stuart of Patrick, now moved to take up the resolution he had offered a day or two since, and which, at his own motion, had at that time been laid upon the table.

Mr. S. expressed his surprise at what had fallen from Mr. Scott, who, when this resolution had been laid upon the table, had declared he should vote against ever taking it up again. He contended that as the resolution had been offered by way of compromise, and had never been considered either in Committee of the Whole or in the House, it ought, at least, to have an opportunity of being considered.

Mr. Scott disclaimed any want of courtesy: if the amendment had contained any new matter, or was likely ever to be made acceptable to the House, he should not be for refusing to consider it: but as the question on the basis had been settled by a decided majority of the House, to call it up again was worse than useless: it could end in no good. No respectable majority could be obtained for the scheme, and he could not believe the gentleman from Patrick could desire, by a majority of one or of two, to force it upon a reluctant minority.

Mr. Doddridge contended for the obligations of courtesy and gentlemanly demeanor toward each other as equals—and asked what could be the cause of the fear of taking up the resolution, and of having a vote recorded upon it? Was it that gentlemen would be exposed to inconvenience from thus having their votes made known?

[Here the Chair reminded Mr. D. that it was out of order to insinuate any unworthy motives for the conduct of members of the House.]

Mr. D. said he wished to record every vote he had given or should give in relation to every proposition for a compromise. Was he not to be indulged in so doing? He disclaimed all intention of bringing on an argument on the subject of the basis of Representation: but he thought the gentleman from Patrick ought to be allowed to explain and defend his own proposition.

Mr. Stuart said, that he did not agree with Mr. Scott in the opinion that the question of representation had been settled by a decided majority, or settled at all. The question on future apportionment had failed, not by a decided majority, but by an equal vote: and though the plan of present apportionment had been carried by a considerable majority, yet the votes which constituted that majority had been given, most of them, under an expectation that some plan of future apportionment was to be appended to the scheme: and if that expectation was to be taken, the majority in its favour would not exceed two at most: and what eloquence had they not heard expended in denouncing *lean* majorities? Let the resolution have the chance of a consideration; and if not acceptable in its present form, possibly, it might be modified, (even to the introduction of freeholders only,) so as to command a respectable majority.

Mr. Gordon said, he should vote against taking up the resolution. He was actuated by no want of courtesy toward the gentleman from Patrick, for whom he had the greatest respect: but it was obvious to all, that the mere mention of the subject of the basis of Representation, produced excitement in all parts of the House. The question of future apportionment, was one which had been got up in this Convention. He had never so much as heard the idea broached in his district. The only question there was as to the equalizing of representation: the other question had never been discussed, and it was most plain that it was a subject which never could be agreed upon in this body. The two sides of the House were equally divided, and he was not going to throw himself into the scale of either, to enable it to saddle the other with what was unwelcome and grievous. Let us, said Mr. G. go back to the people, who are our masters—let them either accept or reject the Constitution as they think fit, and if by any change in population, it becomes unequal in its operation, they would be competent to counteract it through the Legislature. But surely that House was not

to sit there from month to month in angry disputation. For fear of such a result, he should be for keeping the resolution where it was, upon the table. He greatly questioned whether it was the interest of a slave-holding community, to agitate the question of power every ten years: it always would tend to excitement, and while this lasted, all bonds of brotherhood, between East and West, were too apt to be forgotten.

Mr. Johnson expressed a hope that his friend from Patrick, would not now press his motion. He, (Mr. Johnson,) would vote to take it up in due time: but he preferred at present to go through the Executive and Judicial reports: and when they were gone through with, he should be prepared to take up the other resolution.

Mr. Stuart acquiesced, and the motion was withdrawn.

The Convention then proceeded to the consideration of the Judicial Committee—and concurred with the Committee of the Whole, in the smaller amendments to the first resolution.

The first resolution as thus amended, reads as follows:

“Resolved, That the Judicial power shall be vested in a Court of Appeals, in such Inferior Courts as the Legislature shall from time to time ordain and establish, and in the County Courts, and in the justices of the peace, who shall compose the said courts.”

Mr. Bayly moved to amend the resolution, as thus amended, by striking out these words, “and in the County Courts, and in the justices of the peace, who shall compose the said courts.”

Expressing his purpose to forbear debate on a subject which had been so fully discussed, he asked for the ayes and noes, and they were ordered by the House.

Mr. Henderson now moved to amend the amendment by striking out the word “the” before the words “County Courts.” On this question Mr. Leigh demanded the ayes and noes. A debate ensued, in which Messrs. Campbell of Brooke, Powell, Doddridge, Mercer, Leigh, Giles, Stanard, Bayly and Naylor took part: but the substance of which has already been more than once reported.

The merits of the County Court system were incidentally, though not extensively discussed: none proposed directly to abolish them, but the desire was avowed to place them, like the other Inferior Courts of the State, under Legislative controul. Mr. Mercer suggested that the system, though highly beneficial, in its present form, in one portion of the State, required modification in the West, where a small salary ought to be allowed sufficient to cover the expenses to which respectable farmers were subjected in travelling very considerable distances to attend their duty as magistrates. This idea was warmly reprobated by Messrs. Leigh and Giles, as going to mar the system, and revolutionize its whole character.

Mr. Bayly said, the gentlemen who opposed the motion did not display their usual candour. They had treated the question as if it was to destroy County Courts; no gentleman that he had heard, avowed any such intention in debate. We must have County Courts, but whether they are to be held by justices of the peace filling up their own body when vacancies occur, or with the extensive multifarious powers they now possess, was a question for the people of the State to determine by their Legislature; and all that was now desired, was to put these courts under the controul of the General Assembly: for to continue them as they now are, or to modify, change or abolish them, as the interests of this great State may, from time to time require. The Convention was not making a Constitution for ten or twenty years, but he trusted they would make one that the people would be contented with much longer. It was, therefore, proper to remedy the evils which now exist, and those which would probably hereafter exist. Perhaps at this time a majority of the people of the counties might be satisfied with the County Court system, but it would not be denied that one-third of them were opposed to it. If so large a number were hostile to the system now, in a few years it was at least possible that a majority of the people of the counties in the State might wish a change; and if so, where would be the great inconvenience to allow the power to a future Legislature, so to modify these courts, that justice might be dispensed to the people of the State according to their wishes. However I may wish a change to be made in these courts. I now only ask the Convention to place them in the same situation as the General Court, the District Courts of Chancery, and the Superior Courts of Law. I desire none to remain Constitutional Courts but the Court of Appeals.

It has been said, that if this motion shall prevail, the County Courts must immediately be re-organized. I do not believe that this would be the consequence; they would be left precisely in the same situation, as the other courts of the State: if it should be necessary to re-organize the other courts, so it would the County Courts, and not otherwise. But, he believed all the courts would go on as they now do, until the General Assembly should believe it necessary for the interest of the State, to make a change. And if the County Courts were such great favourites with the people, as some seemed to suppose, and they are considered as the great machine, by which the republicanism of the State is to be preserved, where is the danger of leaving them to be cherished by the representatives of the people? If they were such paramount

blessings, the people would not readily abolish them, and no danger would threaten them.

If gentlemen had been sincere in the opinion they expressed, the Convention would not have seen them so extremely sensitive, whenever this subject was approached. [Here the Chair reminded the gentleman from Accomack, that it was not in order to attribute a want of sincerity to members of the House.] Mr. B. continued: *Perhaps* it would have been as well, if I had not used that expression. I will suppose that gentlemen *are* sincere: and if so, then they do believe, that these courts are the darlings of the people. Why are they so much afraid they shall be left to the power of the people, acting in their Legislature?

Gentlemen have argued this question, as if we are the Legislature, and are now, for the first time, organizing these courts: and the gentleman from Chesterfield, (Mr. Leigh,) fears the danger of having some little petty-fogger on the bench. The gentleman cannot despise these characters more than I do; and I have no dread, that such characters will ever find favour with a Virginia Legislature. Other gentlemen say, divide the magistrates of the counties, and let them alternately hold the courts, and pay them for their services. To all this, I say we are not now legislating these courts into existence; and it will be the duty of the General Assembly, to consider these different projects, when they come to act upon these courts, and we give them a power to do it. It is to give the authority to the Legislature, that I have proposed the motion. If Virginia shall ever be so unfortunate hereafter, as to put improper men on the bench, or to establish an arbitrary and tyrannical court, she will, I trust, soon retrace her steps.

Sir, it was not my intention, when I made the motion now under consideration, to discuss this question, which has so often been introduced in debate; and when it was under consideration in the Committee of the Whole, was so fully debated, that nothing now can be said on the subject. And all I ask is, that the Convention will put the County Courts with the other Inferior Courts, under the countrol of people assembled in General Assembly.

The question was taken on the amendment of Mr. Henderson, to strike out the word "the," (the Chair, for greater convenience, permitting it to be put in that form,) and decided by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Mercer, Fitzhugh, Henderson, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Chapman, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Gordon, Thompson, Joynes, Bayly and Upshur—40.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Osborne, Cooke, Powell, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Mathews, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Stuart, Pleasants, Massie, Bates, Neale, Rose, Coalter and Perrin—56.

Mr. Bayly then modified his amendment, so as not to touch the justices, but to strike out the words "in the County Courts," and also the words "who shall compose such courts."

This question was decided in the negative by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Moore, Smith, Baxter, Mercer, Henderson, Mason of Frederick, Naylor, Donaldson, Boyd, M'Millan, Oglesby, Duncan, Laidley, Summers, Doddridge, Morgan, Campbell of Brooke, Campbell of Bedford, Saunders, Cabell, Thompson, Joynes and Bayly—27.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Baldwin, Johnson, M'Coy, Beirne, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Fitzhugh, Osborne, Cooke, Powell, Griggs, Pendleton, George, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, See, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Claytor, Branch, Townes, Martin, Stuart, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—68.

The amendments proposed by the Committee of the Whole to the second resolution, (substituting "held" for "elected," and transposing the word "first,") were agreed to, and caused the resolution to read:

"2. *Resolved*, That the present Judges of the Court of Appeals, Judges of the General Court, and Chancellors, remain in office until the expiration of the session of the first Legislature elected under the new Constitution, and no longer. But, the

Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities and past services, shall be deemed reasonable."

The amendment to the third resolution, viz: to strike out "concurrent," and insert "joint," and also to strike out the words "each House voting separately, and being a negative on the other, and the members thereof voting *vica voce*. The votes of the members shall be entered on the Journals of their respective Houses. Should the two Houses in any case fail to concur in the election of a Judge during the session, the Governor shall decide the election, by appointing one of the two persons who shall first receive a majority of votes in the Houses in which they were respectively voted for;" were agreed to by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Barbour of Culpeper, Macrae, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Bates, Neale, Rose, Coalter, Bayly, Upshur and Perrin—88.

Noes—Messrs. Clopton, Scott, Green, Claytor, Thompson, Massie and Joynes—7.

The resolution, as amended, reads:

"Resolved, That the Judges of the Court of Appeals, and Inferior Courts, except justices of the County Courts, and the aldermen, or other magistrates of Corporation Courts, shall be elected by the *concurrent* vote of both Houses of the General Assembly."

The amendment proposed by the Committee of the Whole in the fourth resolution, is as follows:

The original resolution read:

"Resolved, That the Judges of the Court of Appeals, and of the Inferior Courts, shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office."

The amendment proposed to insert the words "except justices of the County Courts, and the aldermen, or other magistrates of the Corporation Courts."

The amendment was opposed by Judge Marshall, on the ground that County Courts and Corporation Courts, not being included within the term Inferior Courts, by any just construction, to except them was improper, because the exception would imply, that they were in their nature included in that phrase, and would be so in fact, if not taken out of it by this exception.

After a few words from Mr. Giles, the amendment was not concurred in.

The next amendment, striking out the words "by and with the advice and consent of the Senate," from the fifth resolution, which gives the power of appointing the magistrates, was agreed to.

The House having gone through all the amendments reported by the Committee of the Whole to the report of the Judicial Committee, returned to that report as amended, and took up its several resolutions *seriatim*.

The first resolution having been read as follows:

"The Judicial power shall be vested in a Court of Appeals, in such Inferior Courts as the Legislature shall from time to time ordain and establish, and in the County Courts," &c.

Mr. Doddridge, with the view of trying the sense of the House, moved to strike out the article "a," and insert "the" before the words "Supreme Court of Appeals."

The motion was negatived.

Mr. Campbell of Brooke moved to amend the resolution, by inserting the words "organization and," before the word "jurisdiction," so as to make that part of the resolution read, "The organization and jurisdiction of these tribunals shall be regulated by law."

This amendment was rejected by ayes and noes as follows:

Ayes—Messrs. Clopton, Anderson, Coffinan, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Chapman, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes and Bayly—40.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart,

Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Powell, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Matthews, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—56.

Mr. Thompson moved to amend the resolution, by striking from it the last clause, which declares, "No modification or abolition of any court, shall be construed to deprive any Judge thereof of his office; but, such Judge shall perform any Judicial duties, which the Legislature shall assign him."

Mr. Campbell asked for the ayes and noes, and they were ordered by the House.

Mr. Giles said, that he was not sure that he rightly understood the clause, but if he did, it was in his opinion highly objectionable, and involved an anomaly.

It seemed to be the purpose of the clause to provide, that after a court should have been abolished, the Judge should still hold his commission, and continue to enjoy his former emolument. If that was its true meaning, (as he judged from no other explanation being now offered,) what would be the situation of the Judge and of the country? Suppose the General Court to be abolished—the Judges had been commissioned as Judges of the General Court—and it was intended that the Judge, as a Judge of that Court which had been abolished, should still be a Judge, and receive compensation. There was no General Court; that had been abolished—yet he was to hold his commission as a Judge of a Court not in existence, and by virtue of that commission to draw his salary. If such was the purpose, Mr. Giles declared himself utterly hostile to it.

There was no gentleman in the Convention more disposed for the maintenance of the independence of the Judicial office than he was. He was decidedly in favour of tenure during good behaviour, but it must be the tenure of an office which continued to exist, and not tenure of a Judge's office when the court of which he was a Judge, was no longer in being, and as a mere apology for paying him his salary. But it was provided, that he should "perform any Judicial duties which the Legislature shall assign him." And what, asked Mr. G., what in the name of Heaven, may these be? Can he be by commission Judge of one Court, and by the duty he performs, the Judge of another? It was most strange to think of holding an office, after the court, to which that office was an appendage, had been abolished. Yet by the very next resolution, the Convention abolished all the offices of the existing courts, though not the courts themselves—and then leaves it discretionary with the Assembly to pay them "such sums as, from their age, infirmities and past services, should be deemed reasonable." To this he had no objection. But would not gentlemen be content, that when the court was discontinued, the Judge should be discontinued, when such a provision was made for his situation?

Should this clause be omitted, Mr. G. said he had an amendment to add to the second resolution, which was intended to put the independence of the Judges beyond doubt. [It provided, that in the modification or abolition of any court, the Legislature should pay to the Judge such sum as to them might appear reasonable.]

Mr. G. said, that there was a great difference between the independence of the Judges, and the independence of the Judicial Department; and he took an illustration from the condition of the Judiciary in England. There the Judges were deemed to be perfectly independent, because their compensation could not be diminished during their continuance in office. We had borrowed the term independence as applied to the Judiciary, from that country, whence we derived our Judicial system. Independence related to the Judge, not to the Department. The British Parliament was held to be omnipotent, and might re-organize the Department at pleasure. But, to go as far as this resolution proceeded, was nothing less than to establish a privileged corps in a free community. The resolutions provided no responsibility for a Judge to any human tribunal. The worthy and learned gentleman from Richmond, (Judge Marshall,) had said that a Judge ought to be responsible only to God and to his own conscience. Now, he (Mr. G.) said that the Judge ought to be responsible to another tribunal—to a human tribunal. As the Convention was now forming a new Government, it was proper it should have some guide, some compass to steer by. In all other parts of the Constitution, they had gone on the principle of responsibility, and in his judgment, they ought to do the same thing in this case. They ought not to convert the Judicial office into an office absolutely independent, by stripping the Judge of all responsibility. But, if they admitted the principle of responsibility, why clog it, so as to prevent its action? One of the first objects in view, in calling this Convention, was to make the Judges responsible—not nominally, but really responsible. If the Convention should frame a Constitution, containing the establishment of a *privileged order* of men, they might rely on its being objectionable, if not odious to the people; but, this clause went to the whole length of creating such privileged order. What was the independence of a Judge? How long did gentlemen ask that it should continue? Surely, it was neither more nor less than this—his security of receiving his salary

during the continuance of his office. He did not, surely, want to receive it after his office ceased. He was not to be paid for good behaviour—that was not the *quid pro quo*—he was paid for doing his duties, not for his good behaviour. In the Constitution of the United States, in every part of it, in order to avoid sinecures, compensation and service were invariably connected. If these were to be inseparably coupled, when the service ceased the compensation should cease. Good behaviour was the mere condition of tenure—it was not the service, and could claim no compensation.

When the office was abolished, let the Judge receive a *doucur*; but, not for his good behaviour—it was for his former services and sacrifices. He could not find the term “independent” in all the Federal Constitution. It was neither in the Constitution of the United States, nor in the Constitution of Virginia, nor in that which was now to be proposed for adoption. All that was necessary to Judicial independence, was that the Judge should be independent of all improper influence when he gave his decision. Independence, as applied to a Judge, was a borrowed term. He was willing to go as far as they went in England, but no farther.

When he had spoken of establishing a privileged order, he had reference to the eighth resolution.

“8. *Resolved*, That Judges may be removed from office by a vote of the General Assembly; but, two-thirds of the whole number of each House must concur in the vote, and the cause of removal shall be entered on the Journals of each. The Judge against whom the Legislature is about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon.”

Here they found in the first part of the resolution, the responsibility of a Judge to an earthly tribunal: but in the latter part, that responsibility was destroyed, by being clogged and shackled. There could be no need of urging the necessity of an earthly tribunal: it was before their eyes: the Judge was liable to impeachment—but in certain very limited cases, where he had been guilty of high crimes and misdemeanors. But in the present resolution, provision was made, or attempted to be made, for offences less in size, but more frequent in recurrence: non-feasance in office, non-user, or mis-feasance out of office. Impeachment might provide for crime, though in practice, it was a cumbrous and circuitous mode of securing responsibility; but here was a provision which declared, that at any time a Judge might be removed, but two-thirds of both Houses must concur. This was inserted, for what? For the very thing he wished to avoid. He wished to allow the Legislature power to remove a Judge, whenever his conduct had been such, that he became unpopular and odious to the people. He would give a tribunal, which might in such case remove him. But not only must two-thirds of both Houses concur; the Judge must receive twenty days notice; then farther days, he presumed, must be allowed him for appearance: then he might employ a lawyer, and thus the object in view would be almost sure to be defeated.

What more was necessary to render a Judge completely independent, than to declare, that his compensation should neither be increased nor diminished, during his continuance in office? that he was to gain or to lose nothing by the decision he should give? When he spoke of the independence of a department, Mr. G. said, he referred to its possessing the means of organizing itself. The Legislative Department possessed this power; the Judicial Department did not—it was in that respect dependent upon the Legislature for its organization. He was for having no Judges so independent as to constitute a privileged order in the Commonwealth.

MR. MARSHALL said, he should regret to renew the debate, were he not pleased with the opportunity of saying, that in casting his eyes over the last debate on this subject, as it had been reported by the Press, he felt displeased with one expression which had fallen from himself on that occasion. A word had escaped him, which might be understood as derogating from the high respect he entertained for the character and talents of a gentleman, (Mr. Barbour,) who had been opposed to him. He hoped that gentleman and the Convention would believe him incapable of having intended to insinuate any thing that might have such a bearing. He well knew that gentleman to be entirely incapable of intentionally misquoting or misrepresenting any resolution that might be the subject of discussion.

With respect to the argument the House had now heard, he did not mean, in any notice he should take of it, to utter one sentiment respecting what had been done in Congress in the removal of any Judge from office, nor on the provision reported by the Judicial Committee, for the removal of Judges by two-thirds of the Legislature. When the House should direct its attention to that clause, he thought he should find little difficulty in satisfying it that that provision was abundantly sufficient for the end it had in view. But that was not now the question.

Mr. M. said, he felt so much difficulty in delivering his sentiments on the subject, that he should be compelled to confine himself to the straight and narrow path that led

directly to the object before him, without departing from it to notice any of the subjects which had been incidentally presented by the gentleman from Amelia.

The question was, whether that clause of the first resolution of the Judicial Committee should be stricken out, which declares that no modification or abolition of any Court shall be construed to deprive any Judge thereof of his office; but that such Judge should perform any Judicial duties which the Legislature should assign him. To that single question he should confine himself in what he had now to say.

The gentleman from Amelia, (Mr. Giles,) had referred to the office of a Judge, and the Court in which he sat, as being, for some reason, indissolubly united. Are office and Court, asked Mr. M., synonyms? Is it impossible to separate them? Can they, by no effort, be sundered? And if it be possible, is it not done in the present case? The resolution makes office to depend on good behaviour; and it expressly declares that the court may be abolished, and yet the office remain. Why cannot language separate them?

The Constitution means to declare, that though the court may be abolished, the Judge shall continue to hold his office, and shall still perform the duties of a Judge. In what does the office of a Judge consist? I have always understood that it consists in his constitutional capacity to receive Judicial power, and to perform Judicial duties: that he is brought into office in the manner prescribed by the Constitution, and can perform the duties of his office, however the court may be changed. Whatever may be the situation of the court—however it may be named, still he holds the office, and if the Constitution shall declare that when the court is abolished, he shall still hold it, there is no inconsistency in the declaration. The gentleman says, that if a person be commissioned as a Judge of the General Court, and the General Court shall be abolished, his office is abolished with it—and he is the Judge of nothing. But the General Court, under the present system, is a Constitutional Court, and cannot be abolished. We know that Judges who were Judges of the General Court at one time, became District Judges, and then Judges of the Superior Court in the county. Should the General Court be abolished, and by consequence, the office with it, the question would occur, whether the Judges would perform any other duties; but if you declare in the Constitution that they shall be thus capable, the difficulty is removed. And will gentlemen say, that this is impracticable? But the difficulty does not arise under the Constitution as it shall be, but as it is: the Constitution now declares that there shall be a General Court. The Legislature can no more abolish the General Court than the Court of Appeals. But the Constitution we are now engaged in making, does not say there shall be a Court of Appeals and a General Court: it says that the Judicial power shall be vested in a Court of Appeals, in such *Inferior Courts* as the Legislature shall from time to time ordain and establish, and in the County Courts.

How will the commission of the Judges be made out? as Judges of the Inferior Courts—and if so, the Legislature may declare in which of the Inferior Courts they shall discharge their Judicial duty. Does, then, a change of that particular court, affect the office in any way? What creates the office? First, an election by the Legislature as the Constitution directs: Second, a Commission by the Governor, or in such other form as the Constitution enjoins. When these acts have been performed, the Judges are in office. Now, if the Constitution shall say that his office shall continue, and he shall perform Judicial duties, though his court may be abolished, does he, because of any modification that may be made in that court, cease to be a Judge of the Inferior Courts?

Suppose that the present Constitution had appointed Judges of the Inferior Courts, instead of the General Court, and their District Courts had been abolished, and Superior Courts of counties had been established in their place, would the Judge of the District Court thereby go out of office? You diversify his duties, and, therefore, his office is to be abolished! If I understand the Constitution a-right, the Legislature cannot, by law, create the *office* of a Judge. It can create *Courts*, and may change them at will: it may give them one name or another name, it may assign them one Judge, or two Judges, or three Judges: it may order them to sit here, or to sit there—it may give them a district of several counties, or may direct them to sit in every county: still they will continue to be “Inferior Courts,” and the Judges must perform any duties the Legislature shall assign them.

Where is the difficulty?

The question constantly recurs—do you mean that the Judges shall be removable at the will of the Legislature? The gentleman talks of responsibility. Responsibility to what? to the will of the Legislature? can there be no responsibility, unless your Judges shall be removable at pleasure? will nothing short of this satisfy gentlemen? Then, indeed, there is an end to independence. The tenure during good behaviour, is a mere imposition on the public belief—a sound that is kept to the ear—and nothing else. The consequences must present themselves to every mind. There can be no member of this body who does not feel them. If your Judges are to be removable at the will of the Legislature, all that you look for from fidelity, from know-

ledge, from capacity, is gone and gone forever. All chance of bringing men upon the bench, who know as much as lawyers at the bar, must be given up: there is an end to it. No respectable lawyer will come to the bench, if, for the slightest cause, so soon as he has separated himself from the bar—so soon as he has incapacitated himself to earn a comfortable support for his family there, he may be thrown out of an office he had been told was to be permanent, and driven away to poverty and all the humiliating consequences that must ensue.

Mr. M. said, he was well assured this was not what the Convention wished to do. But will it not, asked he, produce this state of things, if by any change or modification of the court, the Judge may be put out of office? What necessity can there be for this? Do gentlemen believe that the duties of the Inferior Courts will diminish? That there will not always be as much Judicial duty as you will have Judges to perform it. If this is the fact, and surely it is, if we may reason from past experience, why make a mere transfer of duties to work a removal from office?

Can any gentleman say that the Legislature will never act in this manner? Look at what we are doing. This Convention is removing every Judge from office at one sweep. Are gentlemen sure the Legislature will never do the same thing? Is there any call directed to us which will not sound as loud in the ears of the Legislature? Can we, while at one blow we are dashing every Judge in the State from his office, say that the Legislature will never remove them in like manner hereafter? Sir, we should soon see realized the fears which are entertained by some amongst us.

I cannot sit down without noticing the morality of the course recommended by this measure. Gentlemen talk of sinecures, and privileged orders—with a view, as it would seem, to cast odium on those who are in office. You seduce a lawyer from his practice, by which he is earning a comfortable independence, by promising him a certain support for life, unless he shall be guilty of misconduct in his office. And after thus seducing him, when his independence is gone, and the means of supporting his family relinquished, you will suffer him to be displaced and turned loose on the world with the odious brand of sinecure-pensioner—privileged order—put upon him, as a lazy drone who seeks to live upon the labour of others. This is the course you are asked to pursue.

Some allusion has been made to the tenure of office during good behaviour in England; and to the power of Parliament. In England they have no written Constitution; and yet the Judges consider themselves quite as secure as they are here, where we have one. Parliament will always maintain their independence, in order to save the people from the power of the crown. The crown is the source of apprehension: and the Legislature will never unite with it in removing the Judges from their office.

We have been told this arrangement will destroy all responsibility in the Judges. Are there no other means to make a Judge responsible, but to make him removable from office at the will of the Legislature? If the provisions of the seventh and eighth resolutions are not sufficient to secure responsibility, we can make them so when they shall be the object of our attention. They are not at present before us. I believe they are now sufficient for that end; if not, they can be made so. But is it not new doctrine to declare, that the Legislature by merely changing the name of a court or the place of its meeting, may remove any Judge from his office?

The question to be decided is, and it is one to which we must come, whether the Judges shall be permanent in their office, or shall be dependent altogether upon the breath of the Legislature.

Mr. Giles again rose, and after an apology for troubling the House, said, that if he had had any doubts before, of the impropriety of the clause, the gentleman who had just taken his seat had relieved him from them all. He felt for the learning and standing and personal excellence of that gentleman so high a degree of respect, that he was willing to throw himself into the back ground, as to any weight to be attached to his own opinion, and rely exclusively on the merits he could shew pertained to it, and this he would endeavour to do so plainly, as not to be misunderstood. The gentleman from Richmond had told the Convention that an office during good behaviour, was an office for life. This he denied. There was no such word in a Judge's commission.

No such pledge was given him: was that the real tenure of his office? No, it was good behaviour and the continuance of the office. So long his salary was to be sure, and no longer.

He thought the gentleman had not succeeded in showing that it was not an anomaly to have the court out of being, and an office pertain to the court in being. The gentleman had asked if there were no terms by which this could be done? He answered, no: it was an anomaly in terms. He had, however, such high respect for that gentleman's standing, that he always doubted his own opinion when put in opposition to that of the gentleman. The gentleman had undertaken to show that a man may be a Judge of the District Court after the General Court, of which he had been a Judge, should be at an end. He told the Convention that the General Court

was a Constitutional Court; but was it not surrendering the argument to go back to the old Constitution? By the Constitution now proposed, the Legislature was not to be trammelled. The gentleman had asked whether Judges of the General Court would not perform District Court services?

Judge Marshall here explained: he had, he perceived, been totally misconceived. He had said, that under the existing Constitution the General Court was a Constitutional Court and could not be abolished: but that under the new Constitution the Judges of the Inferior Courts would continue to be such, though some change might be made in their sphere of action—and he had asked whether, because they should cease to perform District Court service, they must, therefore, cease to hold their office?

Mr. Giles resumed: He was very sorry he had misconceived the gentleman: but, after listening to the explanation he had now given, the impression on his mind remained the same still. He insisted that they were not to reason from the General Court existing under a former Constitution, to a Constitution containing no such court within its provisions; and one great object of forming which Constitution, was to get rid of that court. He denied that a Judge *could* perform duty in any other court but that to which he was commissioned. He could not have his commission to one court and his duties in another. Supposing the Judge to be incompetent, (as was known to be the case, and long to have been the case with at least one Judge whom he should not name,) could the Legislature assign such a Judge duties to perform in another court—duties to an incompetent Judge? What duties? Could he receive any at all? None; then his office was *vox et præterea nihil*.

He begged to call the attention of the House to what was the real genuine independence of a Judge in Great Britain. It was the security that his compensation should not be diminished during his continuance in office. Judges in England were deemed to be very independent even before the reign of William and Mary, when their offices expired with the demise of the crown. The law had since been changed, and they now survived—but it was perfect independence to be assured of an undiminished support during the continuance of their office. This was the true independence of a British Judge. Strike out the present clause, and a Judge in America would still be in a better situation than those of England.

But as the gentleman had spoken of hardships should the clause be stricken out, he would offer the amendment he had before read. It was no great favourite of his, but he was willing to go that far, and it was farther than any provision had ever gone on this subject under the sun.

The gentleman seemed to think that he had used terms calculated, if not intended, to throw reproach upon the Judges in office. He was not conscious of having used any terms that reflected in the least degree on their honour and integrity. But it did seem to him, that by the resolutions taken together, responsibility was rather avoided than sought to be secured. Had the gentleman told the House in what it consisted? Where was it? If there was such a thing, he presumed it was describable. For himself he could not see even a shadow of it. The gentleman had insisted that there was the same responsibility in this, as in other cases: and here was the greatest point of difficulty between the worthy gentleman and himself. When a representative returned to his constituents, did they cite him? did they give him twenty days notice to appear and answer? No such thing. They told him at once—Sir, we don't like you. And that was enough—they turned him out forthwith, and held themselves bound to assign no reason to him for so doing. But, in the case of a Judge there must be a majority of two-thirds of both Houses of the Legislature, and sixty days notice; and by the time the Judge appeared, the session would be over. The resolution first laid down a principle and then defeated it. But in the case of a representative, the responsibility was real—and its operation prompt and efficient. The voter might say to the representative as Tom Brown said to Dr. Fell,

I do not like thee, Dr. Fell,
The reason why I cannot tell:
But 'tis a fact I know full well,
I do not like thee, Dr. Fell.

He was willing to risk his liberty thus far—(and if a human being existed, who was more jealous of it, he had yet to see him,) if a Judge became odious to the people, let him be removed from office.

Mr. G. concluded by this remark, that the House had exhibited on the other side the very *acme* of Judicial talent in the country; and yet it had produced no conviction in his mind, and, he believed, would not in theirs; on the contrary, it had but rivetted all the impressions he had previously entertained.

The question was then put on striking out, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Giles, Dromgoole, Alexander, Goode, Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Claiborne, Randolph, Osborne, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, See, Morgan, Campbell of Brooke, Tazewell, Loyall, Grigsby, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Pleasants, Gordon, Thompson and Bayly—44.

Noes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Marshall, Tyler, Nicholas, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Urquhart, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Summers, Doddridge, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Prentiss, Branch, Townes, Stuart, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—52.

So the Convention refused to strike out the clause providing for the continuance of the Judge in office after his court should have been modified or abolished.

Mr. Johnson threw out the suggestion for the reflection of gentlemen, whether the resolutions they had adopted, had not an effect, not contemplated or intended: would not the acceptance of the Constitution by the people, at once, *ipso facto*, abolish all the courts of the State, but the Court of Appeals, and the County Courts? This ought to be provided against.

Mr. Cabell proposed to amend the resolution by striking out the word *office*, and inserting the word *salary*.

But it would not be received, as all the words of the resolution had been adopted, by a refusal to strike them out.

The House then adjourned.

THURSDAY, DECEMBER 24, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Kerr of the Baptist Church.

The question before the Convention, was on agreeing to the first resolution of the Committee on the Judiciary, as amended the day before.

The first resolution of the Judicial Committee came up, when Mr. Thompson moved to amend the following clause:

"The Judges of the Court of Appeals, and of the Inferior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof by either of them, shall vacate his Judicial office." Mr. Thompson moved to insert after the word "Constitution," the following: "But no person who shall have arrived at the age of years, shall be appointed to, or continue in, the office of Judge in this State."

Mr. Thompson said, he should content himself with a very brief exposition of the reasons upon which he rested the merits of his amendment, if merits it had, and its claims to the favourable consideration of the Convention. He doubted not that the question it presented, had been considered by every member of the body, and perhaps every one was prepared to vote upon it. It was considered and discussed in the Judiciary Committee, of which he, Mr. T. had the honour of being a member, but had not as yet been agitated in Committee of the Whole, or in the House. This consideration could alone induce him, at this late period of this protracted session, to detain this body with a single observation. Mr. T. said he was well aware that weighty objections might be urged to the amendment. He had well considered, felt the full force of and duly appreciated these objections. By the adoption of this provision, it was most true we should sometimes be deprived of the services of a competent and meritorious officer, and as often as we were so deprived, should subject to privation and hardship, the disbanded officer himself, should he chance to be in straitened circumstances, and bereft of the means of a livelihood; but, said Mr. T. these are the unavoidable consequences of any general rule. He was willing to encounter these inconveniences, these evils, for the positive good which he believed the amendment would accomplish. In most situations it was the office of human prudence to choose between evils, and this was one of those occasions. All would admit, that without this provision we were exposed to the evil of superannuated Judges. We had experienced it and were suffering under it at this very moment. This would not be denied by any one. And for his part, Mr. T. considered the removal by age of twenty good Judges a lesser evil than the retention for the shortest time of one rendered imbecile and incompetent by age for the duties of the station. The evils which the latter might do, in the sacrifice of the dearest rights of one citizen, the sacrifice of

his life, liberty, reputation or property, were irremediable: the judgments by which these were to be affected, perhaps irrevocable or irreversable. The evils of the removal of even competent Judges, were of a different kind. They were not remedyless. A good officer, if not the best, or so good as the removed, might be found to supply his place. It surely would not be said, Virginia was so poor in judicial talent, that there was at any time an impracticability in getting men between the age of maturity and sixty, sixty-five, or seventy, competent to fill the Judicial offices of the State. Mr. T. said he mentioned these several ages, because he hoped the blank would be filled with some one of them, if the amendment were adopted. Mr. T. thought in the general, that men after passing either of these periods, were incompetent to the profitable discharge of the active duties of life, and for public station: he thought that period of our lives should be devoted to repose, to the enjoyment of the *otium cum dignitate*. So far from feeling any irreverence for age, it was because of his reverence for it that he wished to withdraw the declining years of mortal existence from the busy, bustling scenes and the cares and turmoils of official station. The sequestered shade of retirement was congenial to the feelings of an old man, and to such emphatically, "the post of honour is a private station." Mr. T. said he could readily anticipate another objection to his amendment, and that is, that it was unnecessary—that we had by another provision armed the Legislature, two-thirds of each house concurring, with the power of amotion from office, and that in the event of the case occurring, the Legislature would remove a superannuated Judge. Mr. T. thought that power an inefficacious remedy for the evil, because it involved the exercise of so invidious and so delicate a duty, that he feared its inexecution on the part of the Legislature. To remove an aged Judge, whose only crime was age and infirmity, visited in his declining years with "want and incurable disease," would require the exercise of that Roman virtue, that would stimulate a father to sacrifice a son for the good of the republic—that virtue which we may admire in story, but we cannot expect to pervade the actions of men in these latter times. Mr. T. believed, that with the Legislature the softer and more amiable virtues of compassion and sympathy for suffering and distress would prevail over a sense of public duty, and over the public interests. The vital and paramount interests of a speedy and faithful administration of justice would yield to the moving considerations of individual hardship. Mr. T. believed the power of amotion referred to, would only be resorted to and effectually exercised, when the Judge was guilty of some fault or transgression below the degree of an impeachable offence—such as slothfulness, inattention, &c.; that is, was guilty of some wilful mis-user or non-user of his office, and would not be efficacious for the reasons just assigned to the purposes sought to be accomplished by this amendment. Mr. T. said many reasons could be offered in support of the amendment. He would not detain the House with them all, but would content himself with one, and in conclusion with a reference to the example and experience of other States, which were entitled to respect, if not to imitation. The reason to which he alluded, was this: He believed the limit of age, would have a happy effect upon the Judge himself, whilst in office. The present tenure being for life, no matter how protracted, had a tendency to render the incumbent careless of improvement in that science which was to qualify him for the station. Mr. T. said, it was certainly true; it could not have escaped the notice of the most casual observer; he believed it would be confessed by all, that most of our Judges commenced the retrograde march of intellect so soon as they were elected: to this remark there were but few exceptions. There must be some reason for it. Mr. T. thought it worthy of the serious consideration of this Convention, whether this life-estate in the office, had not the direct tendency to produce this effect. Mr. T. said, if he knew himself, he yielded to no man in veneration for Judicial excellence—if any thing earthly could be an object of idolatry with him, it was the spotless ermine of the able, the urbane, and the impartial Judge. He would be the last man to advocate a periodical election of the Judiciary, or to do any thing knowingly to impair their independence: I mean a proper and just independence—but not irresponsibility. Mr. T. would submit to this Convention, if by fixing this limit, this good effect would not be produced. The uncertainty of the limits ever applying, surely would leave his independence unimpaired—yet the possibility of its application, to each and every case, would create an incentive to mental industry and exertion—an inducement to improvement in legal attainments, and a laudable emulation to build up a reputation for talents and for worth: for the Judge would reflect, that the day might arrive, when he would again be thrown back upon professional exertions for support, or what would be a more probable, and I confess, to me as well as to the Judge, more agreeable anticipation, when, if he needed the aid of his country, he would appeal to its gratitude, (and if he deserved it, would never appeal in vain,) for permission to serve that country in some other station, where he could render the *quid pro quo*, for the means of subsistence.

Mr. T. said, we had the example of other States in favor of this amendment. The provision had prevailed in New York from the foundation of the republic. It was en-

grafted on her first Constitution, had abided the experience of more than half a century, and has received the most decided approbation of the Convention of 1821, by its incorporation into the New Constitution. The Judicial term is there limited to the age of 60, and so has been from the beginning of the Commonwealth. True it is, that Kent, Spencer and others, were the victims of this constitutional ostracism. True, the State was deprived of their services in their Judicial capacity; but it is not true, that the citizens of New York have ever repented of the consequences of that provision of their Constitution, nor was any serious evil suffered in their Judicial establishment—their places were well supplied, at least to the satisfaction of the public, which, after all, is the most important consideration in a Government—which, like ours, rests upon public opinion. And, so far from the State's losing their services wholly, the one is now serving her in the Councils of the Nation, and the other, perhaps, as usefully in private station, as on the bench. The Convention will understand the last allusion to be to Chancellor Kent, and to his Commentaries, the fruit of his retirement. So, in Virginia, if the existence of such a rule, had prematurely deprived us of the useful Judicial labours of a Wythe, a Pendleton, or a Roane, their services in other stations could not have been lost, and we should have been well compensated for their removal, by an escape from the sore evil of superannuated Judges. To designate the instances would be as invidious as it is unnecessary, as the cases are known to every member of this body. The example of New York, said Mr. T., has been copied in the Constitutions of at least three other States, if no more. In Missouri, the limit is sixty-five; in Alabama, seventy, and in Mississippi, sixty-five. Mr. T. would be satisfied with either of these ages, or he would take sixty-three, the grand climacteric of the ancients. He concluded, by expressing a hope, that the amendment would prevail.

Mr. Henderson moved to amend the amendment of Mr. Thompson, by adding the words:

"Unless he shall be re-elected by the Legislature, in which event, he may serve for years more, and no longer."

Mr. Leigh suggested a different collocation of the words, so as to make the whole resolution intelligible as amended.

After some conversation on this subject, and a modification in consequence,

Mr. Powell suggested to the mover of the amendment, whether the case he wished to provide for, was not capable of complete remedy under the eighth resolution. If a Judge, whether from age or any other cause, was notoriously incompetent to the right discharge of his duty, the Legislature had power, under that resolution, to remove him from office.

Mr. Thompson replied, that that view had occurred to himself: it was very true the Legislature *might* remove such a Judge: but it would be an invidious and odious task, and one they would always approach with reluctance. He wished to shield the Legislature from such an unpleasant situation, and let the Judge go out by the expiration of his office, and his Constitutional disability. This would save the feelings of all parties.

Mr. Henderson said, that the observation of the gentleman from Amherst was worthy of great consideration. After sixty or seventy years, the intellectual faculties usually began to be impaired: yet there were men who retained them in their fullest vigour to a much later period. The illustrious Judge Pendleton, that ornament of the Virginia bench, was an instance in point. Such men would be removed by the unsparing amendment of the gentleman from Amherst: but by that which he had offered, provision was made for retaining their services to the State. It was calculated to retain those rare and highly-gifted men, whose mental power seemed never to be exhausted while even a shred of that which was physical remained: of whom it might with truth be said,

The soul's dark cottage battered and decayed,
Lets in more light through chinks which time has made.

Mr. Thompson was opposed to the amendment of the gentleman from Loudoun, (Mr. Henderson,) because its effect would be in a great degree so to qualify the rule as to destroy, if not altogether, very materially, its efficacy. It was an exception incompatible with the principle of the amendment; and was, moreover, obnoxious to all the objections of a periodically elected Judiciary. He, therefore, trusted it would not be adopted.

Mr. Leigh opposed the amendment. He said, it was an attempt to introduce, in Virginia, an expedient, which was (he believed) first devised in the State of New York, but which has since been adopted by some one or two of the new States—why, if regard were had to the lights of experience, he was utterly unable to comprehend. It is certainly true, that the faculties of men decay with extreme age—but it is equally true, that the point of time in their lives, when this takes place, is as various, in dif-

ferent men, as the colour of their eyes. Lord Mansfield was born in 1705; he was appointed Chief Justice of the Court of King's Bench in 1756; and he resigned his seat in 1788, being then eighty-three years old. I pray the gentleman from Amherst, (Mr. Thompson,) to read, or rather (supposing he has read it,) to remember, the judgment of the Court of Exchequer Chamber, in the case of Sutton and Johnstone, in the first volume of the Term Reports; which is said to be the only Judicial opinion extant *written* by that great Judge; all the others having been taken down by reporters, and composed from their notes: that is an opinion written by Lord Mansfield himself, a short time before his resignation: and if the gentleman can find on the record of Judicial proceedings, in any age or country, a more able, more lucid, more eloquent, or more classical composition, I shall be obliged to him to point it out to me, that I may have the pleasure of reading it. It is, so far as I can judge, one of the finest specimens of Judicial eloquence, as well as ability, any where to be found, in ancient or in modern learning. Lord Mansfield resigned his seat, as I said, in 1788—not, if I am rightly informed, because of any decay of his mental powers—but from a defect of sight, such as no glasses could remedy, so as to enable him to discharge the duties of his office. His mighty stream of thought, bound by the frost of eighty winters, was as full or fuller than in the summer of his life, though not so flowing. To me it seems, from a careful observation of his official history, that he was as able in 1788, as in 1756. At the time of the argument and discussion of the famous case concerning the reversal of the outlawry of John Wilkes (in 1768 or 9, I think, I am pretty sure it was before the first of the letters of Junius appeared) he himself mentioned, that he was then turned of sixty. Now, according to the New York rule, he would have been compelled to leave the bench in 1768; and the world would have been deprived—I do not say England, but the world—the civilized world would have been deprived of the benefit of the last twenty-eight years of his Judicial life, and especially of that system of commercial law, which he was then building up and lived almost to perfect; which will bear comparison with the Civil Code, or the new Imperial Code of France, or any other on earth, for the justness of its principles, and even for its symmetry; which, in short, in all its parts, bears the impress of a vast and various and beneficent genius.

I have been at the pains, since this Convention question was started, or rather revived in 1824, to examine the chronological lists of the English Judges. The mass of business despatched by those twelve Judges of England, almost surpasses belief. It certainly transcends beyond all comparison, the mass of Judicial business in the Commonwealth of Virginia. (I do not say in the United States, for we are a more litigious people in proportion to our wealth, than any other in the civilized world.) They have jurisdiction of all causes, where the value in controversy exceeds forty shillings. They generally, I believe, take their seats on the bench at nine o'clock in the morning, and continue sitting till late in the afternoon. They then take their places in the House of Lords, as a sort of "advisory Council," (as we should phrase it) in cases in which law questions may be involved: and really, Sir, from the days of Holt to this time, it is astonishing to see what a large proportion of them have been over seventy and even seventy-five years of age. These old men transact such a mass of business, as seems unaccountable—especially to us, who look at the mode in which business is done here; who reflect on the tardiness of our Judicial proceedings, owing to reasons well known to the bar, at least to some of them, or, if not, well known to the bench. A great part of the blame certainly rests on the bar. I give this as my experience, and take my full share of the blame.

But let us proceed farther. Suppose the New York rule had been the rule in Virginia: how would it have worked? At what period would Wythe have been expelled from the bench? I know, it was supposed, that the force of his mind was much impaired by old age; but I have heard those who knew him best, and were most competent to judge, say, that age had only unfitted him for the drudgery and details of the station he held—(let it be remembered, that that station, till shortly before his death, was that of High Chancellor of all Virginia,) and that much, very much, of the power of his mind still remained: and, to the day of his death, *that* remained, which, if it does not supply the place of understanding, contributes, above all things, to enlighten and direct its action—that which is one, and the most essential ingredient of true wisdom—I mean benignity of heart, unsullied purity, and all the firmness of Roman virtue. And his decrees, to the very last, though they exhibited much of quaintness, and some inattention to, or oversight of details, and the slowness of old age, aggravated in his case by the loss of the use of his right hand, owing to which he must have lost not a little time in noting details, yet displayed, always, a heart which never swerved from pure and impartial justice, and a judgment which seldom strayed, and never far, from the eternal principles of truth and right.

If we had had the provision which prevails in New York, Pendleton would have been removed from the bench, twenty-four years before his death—for he died at eighty-four. I ask any gentleman, acquainted with the facts, was the business of the Court

of Appeals conducted with less despatch in his latter years? Did he display less address, less power of mind, in directing the deliberations of the court, and in bringing younger Judges to habits of diligence by his presiding influence? The direct reverse was the fact. As he advanced in years, his influence continued to increase—it never ceased to be felt. The power of his mind, the controlling influence of his hoary wisdom, was felt and acknowledged by such men as Spencer Roane. I derive my information from the fountain head—it was given me by Roane himself. Of Judge Roane, I could speak from personal knowledge—I knew his private and official character perfectly well—but he belonged to our own times, and the place he filled in the public confidence is known to us all. He, it is true, died at the age of sixty-three—but the New York rule would have anticipated the hand of death in removing him from the bench. I say, in the name of all the bar of the Court of Appeals, and I might venture to say in the name of all the people of Virginia, that it was precisely at the period of his death, that his understanding was the strongest; that there was no want of every faculty adapted to the able discharge of all the duties of his station.

We have, then, a series of instances of English Judges, retaining the full vigor of their minds, to seventy, seventy-five, and even eighty years—and we have a history of the Virginia bench confirming a like state of facts. Gentlemen will draw their own conclusion.

Turn now, I pray you, to New York, from whose institutions we are to borrow this improvement. It is a mistake to suppose, as the gentleman from Amherst does, that Kent and Spencer were both removed by the limitation of age. It was not the Constitutional provision, but a revolutionary decapitation, by which Spencer fell. He was *Conventionalized* out of office. We are going to *Conventionize* all of our Judges. The New York Convention had the grace not to abolish the Court of Chancery; and thus Kent was left to die a political death at the age of sixty. He is a superannuated Judge! The man remains in full possession of a first rate capacity, peculiarly adapted to Judicial station.

Does the gentleman from Amherst ever read the New York Reports? Perhaps, he has seldom had occasion to consult them; but those who have to discuss questions of commercial law, must necessarily refer to them. I venture to recommend them to the gentleman: he will find great profit from the perusal, whatever may be the point of law-learning, on which he may want information. I must say, that to me nothing seems more apparent, than that the younger Judges, of whom the gentleman spoke as so ably supplying the place of those said to be superannuated, are in every way inferior to them. In my poor opinion, there is a manifest deterioration in the bench of that State. For my own part, I attribute it, mainly, to certain new principles introduced by their late Convention, but, whatever be the cause, the fact is so, or, at least, generally believed to be so.

Yet it must be admitted, and I freely admit, that there is a period of life, at which the strongest minds become impaired: but I deny that it is always, or even generally, at seventy, or at seventy-five. But there is a period somewhere. Let us see, whether there is any necessity to fix that period in our Constitution.

A provision has already been agreed on, for the removal of any Judge by a vote of two-thirds of the Legislature. Let age then, or let disease (which is a much more frequent agent in producing such an effect,) impair the intellectual powers of one of our Judges, and that in so great a degree that it shall be apparent and undeniable; this provision is a remedy for the mischief. It is unquestionably true, that it will be a task of extreme delicacy to remove a Judge for such a cause, and that the feelings of the Legislature strongly revolt at the thought of turning out an aged public servant on account of his age alone. There was truth and good sense in the remarks of the gentleman on that part of the subject. But then it must be remembered, that you cannot contrive any system of human law, which will always work well, which will not sometimes be productive of evil. All we have to do, and all we can do, is, to adopt such measures, as will be most apt to produce the most good and the least evil. If we establish a fixed period, we shall surely encounter the very serious evil of expelling from the bench, some, nay many, who at the very time most adorn it. The question, then, comes to this, whether the adoption of the proposed principle will not, in all probability, oftener remove matured wisdom from the bench, or the rejection of it, retain imbecility or dotage in the judgment seat. In my opinion, it is more prudent to take the risk of the latter mischief.

Mr. Campbell of Brooke, said that the Convention had now arrived at the period of its debates when a long discussion could not be agreeable, though conducted with the eloquence of Demosthenes and Cicero. All he wished was, to ask a question. Was the fundamental rule, in any country, established upon exceptions? If it was, and ought to be, then he admitted that various instances might be produced of men who retained their powers to a late period of life. The gentleman from Chesterfield might have gone further back. He could, indeed, have found but one Moses, who

was one hundred and twenty years old when he died: his eye was not dim, nor his natural force abated." But he might find thousands over four score who kept the vigour of their minds. But was this the great law of nature? How many more were there who lost their vigour before they passed the grand climacteric? And ought the rule to have respect to the few exceptions, or to the multitude of ordinary cases? On the gentleman's principles the same difficulty would occur in fixing a period for mature age. It was fixed by our laws at twenty-one: but how many thousands might be found, whose minds were as mature, and their bodies too, at eighteen? Yet who would change the law? In the present case he should think the more broad and universal it could be made, the better: and there were certainly more who lost their powers before seventy, than who kept them till after eighty. He thought the public good would be a gainer and not a loser by the exclusion.

Mr. Venable said, this was one of those questions on which he had reflected with much anxiety: the more, because he had not entire confidence in his own opinion respecting it: for he found, in conversation with those whose judgment he most respected, that they differed from him on this point. He should not trouble the Convention with all the reflections he had indulged, but would offer one or two remarks. Let us suppose, said Mr. V., that we do not set any such limit as is proposed: what then? When a man becomes old, and his powers begin to decay, you subject him to the Legislature too, to what must be equally painful to both. For he will generally be the last to discover when his mind gives way: and if he is removed, though with the best cause, he will consider his country as ungrateful, and will suppose that those who have brought forward the measure have been influenced by motives of personal hostility. He cannot see his own imbecility: he cannot, therefore, anticipate its consequences; and whenever they do come, they will be sure to take him by surprise. Let us now look on the other side, and suppose an age to be fixed by the Constitution when he must go out of office. He then accepts the office with this knowledge—he can anticipate the consequence, and he shapes his course accordingly. When he returns to private life, he does so with feelings uninjured, and he continues to enjoy the same respect as he did before. His removal implies in it no imputation on his understanding. Thus far as it respects the individual himself.

We have had examples both from Europe and this country to shew that men sometimes retain their powers to a great age. I admit all the force of these examples. I acknowledge that it may happen that a Judge will be quite as valuable after he has passed the prescribed limit as before. But how difficult will it be to determine this: and to what an extremely unpleasant situation does it reduce the Assembly. For myself, I believe the faculties decay between sixty-five and seventy. I will not go to England for cases to settle this question. I will look round me, on those who were the companions of my youth: and where are they? Several of them are in the Judiciary. Are they able to do their duty there? I wish they were. I wish it for the sake of the country, and for their own reputation. Some few of them are competent. But would it not wound my feelings most sensibly to see an aged Judge turned out of office, and incompetency openly avowed as the cause of his removal? We are not to judge from extreme cases. We do know there is a time when the mind decays, when its powers begin to sink. I know it by my own experience, and by observing those whom I knew in youth. But unless some definite time be fixed, how can they look forward and anticipate the time when they are to retire: when old age arrives they ought to retire: it is fit and becoming: and I do not wish to see them electioneering with the members of Assembly to be retained in office. If a man is honest and loves his country, his feelings will be tender: but if he is one who has always been hunting after office, the case will be far different. Mr. V. concluded, by declaring his willingness to vote for filling the blank in the resolution with the age of *seventy*.

Mr. Johnson said, that he was opposed both to the amendment of the gentleman from Amherst, and that of the gentleman from Loudoun: and he would detain the House but a few minutes, while he briefly stated the grounds of his objections. He was opposed to the latter amendment, because he considered it as inimical, in its effect, to the independence of the Judiciary. If a Constitutional period should be fixed, at which all Judges were to vacate their office, and then the Legislature should be clothed with power to re-appoint such as they considered peculiarly able and meritorious, the inevitable effect would be, that all Judges would be under a temptation to court the Legislature for their continuance in office. Supposing a man to be placed upon the bench at fifty, if he must return to the Legislature for a re-appointment at sixty or sixty-five, the plan carried all the evils of an election of Judges for a term of years.

He was opposed to the first amendment, because he believed it would operate most injuriously upon the interests of the Commonwealth. He could not, however, speak with certainty as to its effects, until the blank should have been filled. If it was to be filled with ninety, there might as well be no amendment at all; or if with eighty, it would be of little consequence. But, he was to presume, that the blank would be

filled with some age, that would give the rule a practical operation. A rule that would touch but one man in a century, would be of little moment: he supposed it was to be such a rule, as would often take effect. Suppose the blank filled with sixty or with sixty-five, and what would be the consequence? One consequence had been already pointed out, in a manner so clear, in language so eloquent, and with references so imposing, that he need add nothing to enforce it. Its operation would sweep from the bench its brightest ornaments, and deprive the Commonwealth of its best security in the wisdom and experience of those who administered the laws. They had been told, that this could only happen in those few rare instances, which an indulgent Heaven sometimes permitted to bless a country. True: and these were the very men, whom, above all others, they ought to take every means to retain. It was this rare talent, which they should be the most anxious to cherish. What was not the value of such a man as Pendleton and Roane, in guiding the deliberations of the Judicial tribunals of the country? One such Judge, was worth all the young athletic men from thirty to sixty, whom you could bring upon the bench. They ought not lightly to adopt any regulation, which would banish the services of such rare and gifted men, precisely at the time when their services were of the most value.

There was another operation of the rule, which would prove not less deleterious. It was on all accounts desirable, to fill Judicial stations with the best legal talent that could be obtained. Now, such talent would or would not be likely to be obtained, according to the value of the reward which was held out, as an inducement to go upon the bench. When a lawyer, on being offered a commission as Judge, was to be told, that he could not hold the office more than ten or fifteen years, and must then be turned adrift, it stripped the offer of more than half its value. Unless they meant to make up for this, by giving their Judges such a salary, as to be a sufficient temptation, by enabling him, in that time, to lay up a enough to provide for his old age—(and he well knew, that Virginia meant to do no such thing)—the temporary duration of the office, took away more than half its value.

What was the ex-Judge to do? Turn his thoughts to some other employment? To what purpose? Must he go back to his practice? To his practice at the bar, at sixty-five? His practice was gone; all connexion with his clients had been cut off; surrounded too, with competitors in the meridian of life, and in full possession of the bar; to plunge into all the turmoils and strife of the bar, at the age of sixty-five!

But, it was said, that he might keep a private school, and thus be more useful to his country than ever. A noble prospect, indeed, to be offered to the first talents in the country; to be turned off the bench at sixty-five, and go to keeping a school!

The gentleman from Amherst seemed to think that the knowledge of this prospect would have a tendency to cause the Judge to keep his faculties whetted, and ready for action, and thus he would not relax, but rather increase his exertions. He would not forget what little law he knew, and grow worse from year to year, as at present. Now, his opinion was, that the knowledge of such a prospect would operate directly the other way. Tell a man that, at all events, his office must be taken from him after a few short years, and what would he do? devote himself to its duties and whet his faculties for future exertion? No: but he would withdraw all the time and all the exertion that could at all be spared from its duties, that he might occupy it in making a provision for the future wants of his family: his temptation would be, to neglect the service of the public, that he might improve his private fortune. He would say to himself—"I have got this situation but for a few years; the wants of my family will require all I can make in the mean while." If the confidence that he was provided for during life would have a tendency to relax exertion, what would the knowledge of the opposite produce? It might make a good farmer—a good merchant—a keen speculator; but certainly not a good Judge.

Why fix a limit, where they had already a provision allowing the Legislature to remove a Judge whenever they might deem it expedient? The Convention had been very properly told, that it was not old age alone that incapacitated men for mental exertion: disease often produced that effect long before. It would often do so, even before the Constitutional period should have arrived. What then? Certainly the Legislature would be most reluctant to exert its power, when a few years would accomplish it. A Judge becomes paralytic at sixty: five years more would rid them of the burden, and they would be unwilling to remove him beforehand. He put it to every gentleman who heard him to say, whether the imbecile Judges now on the bench (if there were any such) had become so by the hand of old age merely? or whether they did not owe it rather to the hand of disease? But, that provision putting it in the power of the Legislature to turn out a Judge who was unable to do the duties of his office, would operate as a warning to the Judge himself and to his friends; and before the Legislature could act on the case, they would be anticipated by the prudence of the individual or the advice of his friends, and he would himself resign his office. His friends would feel the necessity of the case, if the man himself did not.

Mr. J. concluded by declaring his preference for a Constitution without such a limitation as was proposed by the amendment.

Mr. Thompson said, he had listened with much delight to the able and eloquent remarks of the gentleman from Chesterfield, (Mr. Leigh,) and the gentleman from Augusta, (Mr. Johnson.) The first gentleman had certainly presented in formidable array, the evils which such a provision would have produced in Virginia and England, and had produced in New York, where it had been tried; but after all, the gentleman's examples were but exceptions to a general rule, and exceptions of which he had made the most, by a most interesting narrative of Judicial history and Judicial worth, a most beautiful eulogium, and just as beautiful on the Judges to whom this provision would have or had applied. The gentleman had, by no means, transcended the limits of just panegyric in the tribute of praise he had paid to the names of Mansfield and of Holt, of Wythe, Pendleton and of Roane, of Spencer and of Kent. Mr. T. was sensible of the justice of the eulogium—he heard it with delight, and as a lover of living and departed worth, he was glad the gentleman had undertaken the task, and had performed it with his wonted felicity of thought and expression, and he acknowledged the force of the argument bottomed upon it. Mr. T. said the strong views of both the gentlemen, though they had produced doubts in his mind, had not convinced him; and he would, with the indulgence of the House, attempt in a short reply to sustain and vindicate the amendment and the views he had submitted when first up. Mr. T. said, he had frankly admitted in the outset, that the rule would sometimes work evil; as what general rule would not? He had endeavoured to shew that the good would preponderate in the scale. Such, said Mr. T. is the constitution of man and of human affairs—good and evil are so mixed up and blended, that we are reduced continually to the choice between evils, and this more especially, as we have been informed by sapient statesmen, in the foundation of Government and the enactment of all general laws, rules and regulations whatever. There is, perhaps, no unmixed good, nor unmixed evil. One thing is certain as it seems to me, said Mr. T. there is no general provision of Constitutions or of law, without its particular hardships, and such is the character of the amendment in your hand; but shall cases of individual hardships or inconvenience be put in competition with the public interests? Shall the paramount consideration of a speedy, able and satisfactory administration of justice, that incomparably most important function of all Governments, yield to individual convenience or inconvenience? Mr. T. trusted not. The remarks of the gentleman from Chesterfield, (Mr. Leigh,) only proved what was not denied, that some men retained their faculties to a very advanced age, and the names he invoked were truly illustrious examples. He might have added another to his catalogue. He might have vouched the authority of Tully in proof of the fact, for he had informed us in his treatise *de senectute* that Cato, as well as I remember, retained his faculties in full vigour to the last day of an unusually protracted life, and he continued to improve to the day of his death, and that he was exempted from that almost universal infirmity of life's "last scenes," second childhood. But Mr. T. would ask again, if this were the common fate of the species? or were these instances only rare exceptions? Every man's own experience or observation would furnish him with the answer.

The propriety of a general rule as to age, in defiance of the exceptions that might be urged against it, was illustrated by a provision we have already adopted almost without objection. We have provided, that no man shall be eligible to the House of Delegates before the age of twenty-five, nor to the Senate before the age of thirty; to say nothing of the provision of the United States Constitution, that requires a person to be thirty-five, before he is eligible to the Presidency, and the provision in the code of all nations fixing a period of maturity, in some one, some another, and in ours the age of twenty-one years. Now, said Mr. T. I would ask gentlemen if there are not as many and more instances of precocious intellect, than of persons beyond the age of sixty or seventy years retaining the full possession of their mental, to say nothing of their physical faculties? They must answer in the affirmative—need I illustrate this by example? I might cite the younger Pitt, who, before the age of twenty-five, was, perhaps, the greatest prime minister that ever ruled the destinies of England, and with them almost those of the world. Lord Byron at an age but little more advanced, an age at which the generality of mankind are but commencing their careers of glory or of usefulness, had finished his; and a more brilliant one has seldom, if ever, been run by any votary of the muses: but would it be fair to conclude from these and other like instances that might be cited, that thirty was not the proper age of eligibility for Senator, or thirty-five for President of the United States? If it would not, as little will the extreme cases put by the gentleman from Chesterfield, (Mr. Leigh,) oppugn the principle of the amendment.

It was true, said Mr. T. that the English Judges were generally old men; many of them, indeed, as had been properly remarked, had presided to very advanced ages. They could not in the nature of things be very young men, when they ascended the

bench, after having dragged out their probation and rode out their quarantine of the "*Viginti annorum lucubrations*;" but was it not also true that the English nation, at this time, was not altogether satisfied of the correctness of their ancient prejudice in favour of ancient Judges? The question whether or not it was a blessing or a curse, had been agitated there and discussed with freedom; he was not certain, but he believed, in the Edinburgh Review. In whatever periodical it was, this he remembered about it, that the prejudice in favour of very old Judges, was assimilated to that which prevailed in Europe, and, perhaps, every where in favour of old generals, until it was exploded by the genius and the successes of Napoleon. That there was *some*, if not an entire analogy in these prejudices, Mr. T. said, he could not doubt. But advanced age is a less objection to an English Judge than it is here; because ours, except the Judges in the last resort, require to discharge their duties well, the possession of more of physical energy than do the English Judges. The reason of the distinction was apparent to every lawyer, at least; it was to be found in the different organization of our Judicial establishment.

Mr. T. said, the gentleman from Augusta, (Mr. Johnson,) had foreseen several evils in, and pointed out several objections to, the amendment. He thought them rather imaginary than real. That gentleman and himself had certainly drawn directly opposite conclusions from same premises. He apprehended the greatest evil from the very features from which he, Mr. T., anticipated the greatest good. The gentleman thought it would impair the independence of the Judge—that it would prevent competent persons from accepting the office; that it would divert the mind of the Judge from duty while in office, and set him to electioneer by anticipation for a new office, which he might never live to occupy; and that should the Judge chance to live beyond the term of limitation, deplorable would be his condition—a lawyer without clients, and an aged man set adrift in his old age to starve, or to subsist upon the stinted bounty of an unfeeling world. Of the loss of clients, said Mr. T., the complaint was really groundless—for, said he, I never have yet seen a lawyer in practice over the age of seventy; though doubtless such have been—but the cases are too rare to form the foundation of an argument. There was no danger of men well qualified not accepting the office, and he could not possibly conceive how it could impair the independence of the Judge or serve to turn him aside from the path of duty. If he, Mr. T. was not mistaken in his estimate of the nature of men, the consequences and effects would be directly the reverse, and such as he had before pointed out, and he could not, therefore, now repeat. Mr. T. said, it was his deliberate opinion, that it was a far greater evil to have even one superannuated Judge upon the judgment seat than to exclude many good ones for age, for the reasons he had before assigned. Mr. T. said, the pertinent and common sense view, that had been taken of this subject by the gentleman from Prince Edward, (Mr. Venable,) and the gentleman from Brooke, (Mr. Campbell,) who had preceded him in its favour, seemed very much to confirm him in the opinion that the amendment would prove salutary. Their views had doubtless rendered much of what he had said unnecessary, perhaps repetition—and he was sure would render any thing more from him tiresome to the Convention. He was himself fully prepared to record his vote in favour of the amendment.

Mr. Stanard thought it most extraordinary, that the gentleman from Amherst, while conscious as he confessed himself to be of one sort of influence likely to be exerted on the Judiciary from fixing a limit to their period of service, should yet be so blind to another sort of influence equally obvious. Was it not surprising, that while drawing his precedents from the State of New York, and with the recent history of that State before his eyes, he should make no allowance for this obvious tendency of his plan? The next evil to a dependent Judiciary, was a *political Judiciary*. He viewed such a Judiciary as one of the greatest curses that could befall any community. To have the seat of justice invaded by party passions and political partialities, and to have its course moulded by them! Who could contemplate such a state of things without grief and alarm? The gentleman from Amherst had said that a Judge, should his faculties remain unimpaired beyond the Constitutional limit, might look forward from the favour of his country to be placed in some other situation by way of requital for his past services. He granted that he might do so: and more; he certainly would do so: he must. But, what public favour could any one hope to gain, in the state of this country, if attached to none of the party combinations of his day? Who could hope for such a thing? Who believed it possible? The consequence was inevitable—the tenant for years would make his situation subservient to the reversion: and if he did not, his old age must be left without any provision. But were they left to *a priori* conclusions on this subject? Was not the fact before the gentleman's eyes? and in that very State from which he had drawn his precedent and his argument to support it? Look at the state of political parties in New York—was not the gentleman sure that party had influenced this limitation of office? The expectation of a reversion had had there the most pernicious effect. The bench of that State had become a band of political missionaries. The Convention in New York had had its origin solely in

this connexion of the Judges with the party politics of the day. That was the whole cause of it. It had been called for the purpose of inflicting the vengeance of a dominant party on those who, when they were dominant, had used the Judicial station for party ends.

And yet, with these conclusions of reason and experience before their eyes, it was gravely proposed to this body, thus to contaminate the Judiciary, and make it political in its character. In the sober and discreet judgment of the Convention, he should suppose that this view alone was sufficient to condemn the plan.

The gentleman had said, that all general rules worked some indirect mischief, which could not be avoided, and to object to his proposition was to object to general rules. But, he asked, why must we have any general rule in the matter? Why have a general rule, which, as the gentleman confessed, must work some mischief with its good, when they had already a provision that met the case, and produced the good without the evil? He was for no general rule where he could get one adapted to the particular case. He would venture to say, that under the eighth resolution, (which provides for excluding Judges at any time by a vote of two-thirds of the Legislature) there would not be found upon the bench of Virginia for six months, any Judge who, by disease or age, had become imbecile and useless. Every such Judge would be taken from the bench, not by the Legislature, but by his own friends, who never would run the risk of exposing him to Legislative enquiry. Mr. S. concluded that there was no necessity of any such limit as had been proposed, and he should therefore vote against it.

The question was then taken, and the propositions of Mr. Thompson and Mr. Henderson were rejected. The former by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Williamson, M'Coy, Beirne, Smith, Baxter, Venable, Henderson, Cooke, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Doddridge, Morgan, Campbell of Brooke, Campbell of Bedford, Saunders, Cabell, Martin, Thompson and Upshur—27.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, CLOPTON, Harrison, Baldwin, Johnson, Moore, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Madison, Stanard, Holladay, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Duncan, Laidley, Summers, See, Wilson, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Claytor, Branch, Townes, Stuart, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly and Ferrin—69.

The question then recurring on agreeing to the first resolution as amended,

Mr. Doddridge moved to lay the first and second resolutions upon the table, under the assurance that a proposition would be substituted in lieu of them, which would unite the views of both sides of the House.

After some conversation, in which Messrs. Doddridge, Cabell, Scott, Coalter and Leigh took part,

The two resolutions were for the present laid upon the table.

The third and fourth resolutions were then agreed to.

The fifth resolution was read:

Resolved, That on the creation of any new county, justices of the peace shall be appointed in the first instance, as may be prescribed by law. When vacancies shall occur in any county, or it shall from any cause be deemed necessary to increase their number, appointments shall be made by the Governor, on the recommendation of their County Courts."

Mr. Upshur proposed to strike out the latter sentence of the resolution, and insert as follows:

"Before any justice of the peace shall be appointed to fill any vacancy which may hereafter occur, or to increase the number of justices, in any county of this Commonwealth, it shall be the duty of the county court thereof, to lay off and divide the said county into as many wards or districts as may be deemed proper. Every justice now in office, and each one who may hereafter be appointed, shall be assigned to some one of the said wards, but shall, nevertheless, exercise his functions throughout the said county. Whenever a justice shall hereafter be nominated, it shall be the duty of the court making such nomination, to cause the same to be advertised at least days at the door of their courthouse, stating the name of the person nominated, and the ward for which he shall be nominated, before the same shall be sent on to the Executive. And if the qualified voters of said ward shall disapprove of said nomination, such voters shall have power, a majority of them concurring, to nominate some other person for said office, which nomination shall be returned to the County Court, and be sent on to the Executive, together with the nomination made by said court; and the Executive shall appoint either of the persons so nominated, as may be deemed proper: *Provided*, That the person so to be nominated by the County Court or by any

ward, shall be a resident citizen of the county, but need not be a resident of the ward for which he shall be so nominated."

Mr. Upshur briefly explained and supported his proposition. He owned that he had, himself, no objection to the County Courts in their practical operation: but as some were dissatisfied greatly with their theory, and he did not himself wholly approve it, he offered this plan as going to remove in a great degree those objections, and yet preserve the benefits of the system.

Mr. Jones of Chesterfield opposed the amendment in a neat and succinct speech, the principal aim of which was to shew that this scheme, in its substance and practical effect, amounted to giving the election of justices of the peace to the people, thereby keeping up party and neighbourhood strife, and jeopardizing the impartial administration of justice.

Mr. Powell objected to a single ward's having power to elect an officer whose power extended over the county. And as the Governor was to be elected by the people, he would be prone to lean toward the popular nomination in preference to that of the court.

Mr. Upshur replied at length to these objections, denying that the people would elect the justices in any other sense than the County Court would. Neither had they any thing more than the power of nomination. He repudiated the idea of a Judge being biased by partiality to those who had nominated him. As to a nomination by a ward, it did not bind the county—they might unite with the ward-nomination or that of the County Court.

Mr. Coalter opposed the amendment, and told an amusing anecdote about a portion of the people of Giles county living for a time without the laws of the Commonwealth, and establishing a log-rolling Government of summary justice.

Mr. Gordon supported the amendment, and Mr. Scott opposed it, giving a codicil of the anecdote related by Mr. Coalter.

The question was then taken by ayes and noes as follows:

Ayes—Messrs. Goode, Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Henderson, Osborne, Naylor, Donaldson, George, M'Millan, Byars, Chapman, Mathews, Oglesby, Duncan, Laidley, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Neale, Joynes, Bayly, Upshur and Perrin—43.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Marshall, Tyler, Nicholas, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Cooke, Powell, Griggs, Mason of Frederick, Boyd, Pendleton, Campbell of Washington, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Summers, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Bates, Rose and Coalter—53.

So the amendment of Mr. Upshur was rejected.

Mr. Thompson moved to strike out the following words from the last clause of the fifth resolution, viz: "by the Governor, on the recommendation of their respective County Courts," and insert "in the following manner, that is to say, the County Court shall, at the term thereof, next preceding the day of the annual election of the members of the General Assembly, enter of record the fact of the occurrence of such vacancy or vacancies, or that in their opinion other justices ought to be added to the commission of the peace in such county, and how many. Whereupon it shall be the duty of the sheriff, at the election of the county Delegates next succeeding, to open a poll or polls, for the number of justices which shall have been designated by the said County Court—and to make return to the Governor of the persons that shall receive the greatest number of the qualified votes of the county. The Governor shall within days commission the persons, all or any part thereof so returned, unless in his opinion the public interests should justify his refusal. And in the event of his refusal to commission all or any part, he shall without delay transmit to the County Court the reasons of such refusal—but upon a second election by the qualified voters, of the person or persons so rejected in the first instance by him, the duty of the Governor to commission shall be imperative."

Mr. Powell moved to divide the question—and on that of *striking out*, the motion was lost, by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Osborne, Donaldson, George, M'Millan, Campbell of Washington, Byars, Chapman, Mathews, Oglesby, Duncan, Laidley, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Joynes and Bayly—38.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart,

Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Summers, Doddridge, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Pleasants, Bates, Neale, Rose, Coalter, Upshur and Perrin—58.

Mr. Claytor moved in place of the fifth resolution the following :

“Resolved, That justices of the peace shall hereafter be appointed in such mode as shall be prescribed by law—provided, that no law altering the present mode shall be enacted, except by the concurrence of a majority of the members elected to both Houses, and the ayes and noes on all such laws, shall be entered on the journals of both Houses.”

The debate was continued by Messrs. Claytor, Chapman, (who made an explanation as to the anecdote about Giles county,) Mr. Campbell, Mr. Scott, Mr. Giles, Mr. Jones, Mr. Claytor, Mr. Stuart and Mr. Naylor.

Mr. Dromgoole moved a division of the question, upon striking out first. And the question being taken, was decided by ayes and noes as follows :

Ayes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson, Massie, Joynes, Bayly and Upshur—44.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Powell, Griggs, Mason of Frederick, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Bates, Neale, Rose, Coalter and Perrin—52.

Mr. Wilson, with a view of testing the question about the County Courts, moved to strike out from this clause of the fifth resolution, the words “on the recommendation of their respective County Courts;” which was lost—Ayes 23, Noes 73.

The question then came on, upon the adoption of the fifth resolution as amended, and was agreed to, without division.

The sixth resolution was then read as follows :

“Resolved, That the Clerks of the several Courts shall be appointed by their respective Courts, and their tenure of office be prescribed by law.”

Mr. Morgan moved the following substitute :

“Resolved, That the Legislature shall provide by law for the appointment of Clerks to the several Courts, and for their removal from office : but no Clerk shall be appointed for a longer term than _____ years at any one time.”

In explaining and supporting the amendment, Mr. Morgan said—

That the public offices of the State were never intended for private emolument or means of wealth—they were instituted for the public good. But it is well known that the several clerks' offices of Virginia, have been, and still are made sources of great wealth. Many of them are considered fine fortunes to the clerks. Some of these officers discharge their duty faithfully, while others make their offices subserve the purposes of wealth and power, and that too, without regard to honesty or duty. The object of the amendment is to place them completely in the hands of the Legislature, so that they can be made responsible for their conduct and be removed when it is proper. If the resolution be agreed to without amendment, the Legislature will not have power to remove the evils complained of. There is no provision in it for the trial and removal of clerks for corruption in office; and if the General Court be continued and no such provision made, the clerks of county courts at least, must hereafter, (as heretofore) be tried in that court for corruption. This mode of impeachment, or, more properly speaking, of prosecution and trial in the general, is a very ineffectual remedy against dishonest clerks, and never can correct the existing evils. The clerks of the other courts, may be removed in such manner as the Legislature may prescribe. But the resolution provides the courts shall appoint their own clerks—the Legislature can never divest them of this power; the law can only fix the tenure of office, and it will be in vain to make it an office for a term of years to get rid of dishonest clerks. The courts are to be independent, almost of all human power, and can, and no doubt will, re-appoint their clerks as often as they shall think proper so to do.

The amendment which he proposed would give the Legislature full power over the whole subject, excepting that no clerk could be appointed for a longer term than five years at any one time. If it was proper for the courts to appoint the clerks, they would be permitted to do it—if not, it would be done in some other form. The remedy against the abuses to which the people are exposed, will not be sufficient to

secure correction, unless the Legislature shall have power to take the appointment of these officers out of the hands of the courts altogether. The courts will not regard the complaints of the people. They being in office for life, are independent of the people, will keep their clerks so too, if they can, and there is nothing in the resolution to prevent it.

These officers annually fleece the people of the State, and, indeed, too frequently put in the shears before the fleece is half grown, and they are so independent and powerful in their offices, that it is almost impossible to make resistance against their demands. The fees are regulated by law it is true, but the clerks determine the construction of the law themselves—they determine the price of their own labour—render their own judgments—issue their own executions, and enforce payment at discretion. The remedy against them for taking unlawful fees is ineffectual. It is in the hands, mainly, of the justices of the peace, who know very little about fee-bills, and who are not qualified to decide on them. It is a remedy which does not extend to removal, and is seldom resorted to, and there is so much difficulty and uncertainty in prosecuting them before the General Court, and so many modes of getting rid of conviction, that they are almost independent of all power: they can do right or wrong at their own discretion, with very little danger of their ever being removed.

The clerks exercise no little influence in the election of members of Assembly in all the counties. There are two clerkships, and very frequently, two clerks in each county, and, by their constant exertions, they are able to wield elections in very many instances. They are permanent—their exertions constant—and their weight will be felt in every election. If men of independence and patriotism, attempt to reform the law in relation to their fees, these same clerks are the first to strike their fangs into the character of such representatives of the people, and raise opposition to their future elections. They are the chief politicians in many counties, and have something to do with almost every office; and while they exercise the influence and power they now enjoy, the people cannot hope for a revision of the fee-bills. He said, as he had before stated, if independent courts have the appointment of their own clerks secured to them, the clerks will be independent too. He hoped the amendment would be adopted. It would give the Legislature full power over the subject, except that clerks could not be appointed for life as they now are.

Mr. Scott said, that all the resolution declared, was, that the clerks should be appointed by the court: all other things in relation to the office were left absolutely to the disposal of the Legislature. They might provide for the prosecution of these officers—their exclusion from office—the punishment of their offences—the regulation of their emoluments—all was left with the Assembly, except their appointment. And where could that be better lodged than in the courts, whose officers they were? How else would gentlemen have them appointed? elected by the people? by the Legislature? by the Governor? None of these modes, he presumed, would be contended for. How then? the gentleman had not suggested any better mode.

Mr. Morgan said he would beg leave to amend his amendment by striking out the word "five," so as to leave a blank to be filled hereafter. Some gentlemen preferred a different term—he was not particular as to the length of time, but did not wish the Legislature to have power to give the clerks life estates.

He said it was not necessary to say what mode of appointment he preferred. If the Legislature shall think proper to confer the power upon the courts, and they shall exercise it judiciously and properly, they will be permitted to keep it; but if they should act improperly and make bad appointments, the Legislature can find some other power which will give satisfaction.

He would remark, in addition to what he had before said, that no man could doubt that the clerks' fees in Virginia exceed the whole land-tax of the State. They greatly exceed the whole slave-tax—and yet the Convention is about to confer the appointment of all these officers on the Judicial branch of the Government—a branch wholly independent of the people, who pay so great a sum of money. The Convention has been engaged more than two months in the discussion of the basis of Representation in connexion with taxation and responsibility; and here is a class of officers to be made independent, with power to fleece the people of as much money as would be necessary for the support of the Government hereafter! The duties of a clerk, are mainly mechanical, and are generally performed by under clerks, boys, or mere scribes. They are not such as require independence in office; but to the contrary, they require responsibility. There was one other consideration he would suggest. The Legislature might provide that offices should be given out to good and responsible men, who would pay into the treasury for the support of Government, such sums as would be just and right, for the accruing fees. In large counties, where much business is done, the fees make great estates for the clerks, but in small ones, they are a mere competence. The fees cannot be regulated, so as to be larger in some counties than others. They must be uniform through the State; but it is possible that some part of the revenue might be drawn from them, with advantage to the public.

Mr. Campbell of Brooke asked for the ayes and noes, and they were ordered by the House.

Mr. Neale then addressed the House as follows :

Mr. President,—I rise to make a single remark. The character which the gentleman from Monongalia (Mr. Morgan) has given of the clerks of courts, of his part of the country, has struck me with astonishment. He says, they make large fortunes by dishonest means—they fleece the people—that their shears are at work before the fleece be full grown. This to me is most extraordinary—and for fear that people at a distance may really believe that this is the true character of the clerks generally in Virginia, I ask of you and this Convention to bear me out, when I declare that they are among the most careful and honorable men any where to be found. Most sincerely do I deplore the condition of the people from among whom the gentleman comes, in having such rogues for their clerks.

It is certainly not the case in those parts of Virginia with which I am acquainted, and I trust that the gentleman has mistaken the character of the clerks with whom he is acquainted.

Mr. Leigh rose to inform Mr. Morgan that where a clerk was guilty of malfeasance in his office, the court were now bound by law to turn him out.

Mr. Cabell testified to the honorable character of the present incumbent of the office in his district ; but observed, that such might not be the character of his successor. He thought it important that there should be a way of reaching justices of the peace and clerks of the county courts through the Legislature. As matters now stood, no man could be elected to the Legislature, if either the bench or the clerk were opposed to his election.

Mr. Morgan said, he did not impute wrong to the clerks of any peculiar part of the State ; nor to those who do their duty and act honestly. Every person knows how the duties are performed. It is not unfrequent for boys to discharge them, and collect fees, which are afterwards charged and collected when the principal sends out his annual fee bills. Men would rather pay small fees a second time, than go to the trouble and expense of having them corrected. They will sustain a loss rather than "go to law with a clerk," as it is said. Mistakes will occur with the best of clerks, but if they can be put under a just responsibility, these mistakes will not be so frequent hereafter as they have been.

Mr. Doddridge said, that he had resided within the district where his home now was for thirty-three years ; he had known every clerk of the court within that period of time ; and he would state in his place that he had never known a race of more honorable men. Not one within that time had to his knowledge fleeced the people, or sheared them, in season or out of season, or permitted boys to issue fee tickets ; but had properly attended to the duties of their office.

The question was now taken and decided by ayes and noes as follows :

Ayes—Messrs. Anderson, Coffinan, M'Coy, Moore, Beirne, Miller, Baxter, Oglesby, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Saunders and Cabell—15.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Harrison, Williamson, Baldwin, Johnson, Smith, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Duncan, Laidley, Summers, See, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Claytor, Branch, Townes, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—80.

So Mr. Morgan's amendment was rejected, and the original resolution was adopted.

The Chair then proceeded to the next resolution, which provided for the impeachment of Judges before the Senate ; when Mr. Johnson rose to offer an amendment calling to the aid of the Senate, a portion of the Judiciary, to constitute a court of impeachment.

The hour being late, on motion of Mr. Stanard, the amendment was for the present laid upon the table.

Mr. Stanard moved, that when the House adjourned, it should adjourn to meet on Saturday, (to-morrow being Christmas Day.)

After some conversation on this subject, and a motion by Mr. Upshur being lost to extend the adjournment to Monday, Mr. Randolph remarked that he hoped the anniversary of the Prince of Peace, of Him who came to bring peace on earth and good will to men, would not be kept by their wrangling there.

The motion was then agreed to, and the House adjourned to Saturday, 11 o'clock.

SATURDAY, DECEMBER 26, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Taylor of the Baptist Church.

The question was on the seventh resolution of the Judicial Committee, which is in the following words:

"Resolved, That the Judges of the Court of Appeals and of the inferior courts, offending against the State, either by mal-administration, corruption, or neglect of duty, or by any high crime or misdemeanor, shall be impeachable by the House of Delegates, such impeachment to be prosecuted before the Senate. If found guilty by two-thirds of the whole Senate, such persons shall be removed from office. And any Judge so impeached shall be suspended from exercising the functions of his office until his acquittal, or until the impeachment shall be discontinued or withdrawn."

To which Mr. Johnson had proposed the following amendment, viz: to strike out the word "Senate," and insert "a court, constituted in the manner following, that is to say—if a Judge of the Court of Appeals be impeached, the court for his trial shall consist of at least two-thirds of the whole number of Senators, and a majority of the Judges of the inferior courts—and if a Judge of an inferior court be impeached, the court for his trial shall be composed of the same number of Senators and a majority of the Judges of the Court of Appeals"—and instead of "Senate" in the following line insert "court."

After some conversation as to laying the resolution on the table and adjourning (the heavy rain having detained infirm members from their seats), it was at length concluded to proceed with the consideration of the amendment.

MR. JOHNSON spoke thus:

I would very willingly, Mr. Chairman, were I capable, give to the House the information which the member from Frederick has supposed me desirous to give, in relation to the amendment I have offered—but I am not—and I feel very little anxious for the fate of that amendment. I have risen, not to vindicate it by argument, but very briefly to explain the simple grounds on which it rests.

The Judicial Committee prefer, that the Senate of the State shall be the tribunal for the trial of impeachments against Judges; these impeachments being preferred and prosecuted by the House of Delegates. I propose that this tribunal shall consist not of the Senate alone, but of two-thirds at least of the Senators, and a portion of the Judiciary—that when a Judge of the Court of Appeals shall be impeached, a majority of the Judges of the Inferior Courts shall be associated with the Senators; and when a Judge of an Inferior Court shall be impeached, a majority of the Court of Appeals shall unite with the Senators in forming the court for his trial.

The obvious purpose of this amendment is, to assure legal talent and legal information to the court charged with the trial of the highest legal prosecutions; and I should suppose that an advantage so manifest could not fail to recommend itself to favour, unless it brought with it some countervailing evil.

The Senate will no doubt, in time to come, as it has heretofore, and does now, possess in general, a respectable portion of legal learning and ability. But the constitution of that body does not necessarily require, that any of its members should belong to the profession of the law, and occasions may occur, when there will be little if any professional ability in it; whatever there may be, it will always belong to the bar, and for the most part not to the most experienced part of the bar; and I respectfully submit it to the good sense of the Convention, whether that is the kind of legal talent to which we can most safely refer the important duty of expounding the law, and administering justice in those State trials, which may enlist the feelings and involve the interests of the whole Commonwealth.

There is a well-known and wide distinction between the operations of that mind, which is habitually engaged in forensic discussion, in controversial debates indifferently on the one side or the other of any question, and of that which is led by duty, carefully to guard against all improper influences, to search diligently and impartially for truth and justice, and firmly to apply their doctrines, whether popular or unpopular; whether agreeable to the prosecutor or favourable to the accused. The former is seldom at a loss for plausible reasons, to persuade it to follow its own predilections, while the latter rarely fails to disabuse itself of prejudice, to find the path of duty and to follow it. We all know, too, that the habit of defending criminal prosecutions begets in the members of the bar, a strong prepossession in favour of the accused; and that it is one of the first fruits of the Judicial office to correct that prepossession. It is to the impartial, well-informed and well-balanced minds of the Judiciary, to men long in the habit of administering justice, that I would look for aid to the court of impeachments in the discharge of their duties.

What is to be feared from introducing the Judges into this tribunal? Is it, that the *esprit du corps* will give to their minds an improper bias in favour of an accused brother? This fear, I think, cannot be well founded. Remember, that the Judges of one

corps, are to preside at the trial of those of another—that the Judges will vote only in common with the Senators, and will constitute, in the general, a small minority of the court—that their province will be, not to controul, but to enlighten the judgment of their associates—that their judgments will be subject to the criticism of the counsel, in whose presence they are, and that to be efficacious, they must be recommended by reason and justice. Remember too, that these Judges, who will not have the fate of the accused in their hands, will be surrounded by the intelligent, honest, and firm representatives of the people, ready to detect and expose the indulgence of any improper partiality—And can there be any reasonable fear indulged, of the influence of the *esprit du corps*? It seems to me that nothing is to be feared, and that something valuable may be gained from the assistance of the Judges.

It should not be forgotten, that impeachments generally originate in the dissatisfactions of the people—sometimes in party spirit—and may sometimes grow out of controversies between the Legislative and Judicial departments, and that they are always preferred and prosecuted by the House of Delegates, the immediate representatives of the people. If, then, they are to be tried by the Senate alone, also the representatives of the same people, is there not some reason to fear, that this tribunal, though somewhat farther removed from the people, than the Delegates are, and more independent, because of the tenure of their office, would yet be often partakers of the public discontent, subject to the same party influences, which animated the prosecution; parties, in the strictest sense, to the controversy, out of which the prosecution may have grown—and, therefore, strongly prejudiced against the accused? And might not the grave counsels of the Judiciary, in such cases, serve the valuable purpose of tempering a misguided zeal, correcting the errors of prejudice, and holding up to the constituent body, the light of truth, by which the judgment of this tribunal should be judged?

The framers of our Constitution, were so little jealous of the Judiciary, and so little apprehended the influence of the *esprit du corps*, that they made all impeachments cognizable before the ordinary courts of justice, and our early legislation seems rather to have guarded against the undue influence of the House of Delegates, than against the partiality of the Judges. An impartial jury, for the trial of the facts put in issue, was provided, the right of challenge reserved to the accused; and it was expressly provided, that, unless at his request, the impeachment should not be tried, during the session of the Legislature.

Happily, we have had no experience of the operation of these laws in Virginia, there having been no instance of an impeachment, since the foundation of our Government.

In the Government of the United States, where the Senate is the tribunal for the trial of impeachments, there have been two such prosecutions. William Blount, a Senator of the United States, was impeached, after he had been expelled from that body. But, his case was not tried on the merits; it went off, on a plea, that he was not amenable to the prosecution of impeachment, not being a “civil officer,” within the true construction of the Constitution. Judge Chase’s impeachment was tried and decided on its merits. I do not quote it, for the purpose of criticising the trial—though I believe, that the incidents attending it, left very few under the impression, that the Senate of the United States was the most fit tribunal for the trial of impeachments. I mention this trial, principally for the purpose of impressing on the minds of the Convention two truths.

The first is, that the impeachments of Judicial officers, sometimes arise from the conflicts of party politics—as this unquestionably did. I have nothing to say of the merits of the prosecution or the accused—but it is very manifest, that the spirit which maintained, and that which defended this prosecution, was just as likely to find a place in the bosom of the Senate, as in that of the House of Representatives.

The next is, that in the trial of impeachments against a Judicial officer, it is often of the last importance to have the law correctly expounded. Judge Chase was accused among other things, of violating the law of Virginia and perverting it to the unworthy purposes of a party prosecution. He had certainly interpreted a Virginia statute against the opinion of the Virginia bar, and contrary to the practice of some of the Virginia courts. The first important question, therefore, which arose under this charge was, whether he had correctly interpreted the Virginia law—and it was found upon careful examination, that a Judge belonging to another State, who had never before administered justice in Virginia, had given the correct interpretation to a Virginia statute, though Virginia lawyers and Virginia Judges had before thought otherwise. This should be a lesson to us, of the value of legal talents, in the trial of impeachments.

I have been reminded of another impeachment, before the Senate of the United States, that of Judge Pickering—who was convicted of intoxication, while in the discharge of his official duties, and removed from office—but the incidents of his prosecution threw no light on the question we are considering.

I have explained my views in offering this amendment, and willingly leave it to be disposed of by the Convention.

MR. NICHOLAS stated, that since the amendment of the gentleman from Augusta, (Mr. Johnson,) was announced on Thursday, he had given to it the best consideration in his power, and that too, under the influence of the deference which he was always disposed to feel for the judgment of the gentleman who proposed it. But the result of his best reflections on the subject, was, that it would be inexpedient to alter the resolution of the Judiciary Committee, in the manner pointed out in the amendment. The Judiciary Committee proposes to constitute the courts of impeachment for the trial of a Judge, and requires the assent of two-thirds to convict.

The amendment recommends that a portion of the Judges should be added to the Senate, to make up that court. The question is not a new one in the United States. It was discussed during the time that the Constitution of the General Government was under consideration, in the numbers of the *Federalist*. This celebrated work, which has been frequently referred to in this House, was written, to recommend the adoption of the Constitution of the United States, by gentlemen who had assisted in its formation, and who, of course, believed that it was calculated to promote the public happiness. I do not consider this work as binding authority, but entitled to high consideration and respect, not only as being the production of great and enlightened Statesmen, but as containing very able and full examinations of every topic which it professes to discuss. In the sixty-fifth and sixty-sixth numbers, an enquiry is made into the propriety of having established the Senate of the United States as the court for the trial of impeachments. In the course of the discussion, the writer contrasts with the plan recommended by the Constitution, several others that might be suggested. Amongst these, he considers the propriety of uniting the Supreme Court with the Senate, in the formation of the court of impeachments, and the result to which he comes, is, that such an union would be unwise and impolitic. The reasoning employed by this writer, combined with my own reflections, has brought me to the same conclusion. I do not mean to state in detail, the arguments used by the *Federalist*—I will mention one which appears to me to have great weight. But, by the Constitution of the United States, and that of this State, on conviction by impeachment, the party is liable to the sentence of removal from office, and disqualification for future office. But punishment does not terminate here—he is still liable to prosecution and punishment in the ordinary course of law.

If the Judges are to be his triers in the court of impeachment, there would be a peculiar injustice and impropriety in the same Judges sitting on the same cause when tried in a court of law, and bringing with them to that trial pre-conceived and publicly declared convictions of the guilt of the accused. But there are other considerations, which have greater weight with me, applicable to the amendment. It is proposed to unite the Judges with the Senate, for the trial of a Judge. Does not this violate first principles, and all the opinions which we form on this subject? The universal sentiment seems to require that all causes, both civil and criminal, should be referred to triers who are impartial and disinterested. It is a good exception to a juror, that he has an interest in the matter. But it may be said that it is no exception to a juror, that he has an interest in a similar question to that under trial, unless he is interested in the matter in issue. This may be technically true—but no man would like to have his cause tried by a juror who had a similar question unsettled.

In the formation of this court of impeachment, we are not tied down by technical rules—we are to look to the substance of things, and ought to guard against latent and probable influences, as well as those which are palpable and immediate. Viewed in this light, can there be a doubt, that all Judges must be more or less interested in the questions which will arise in the trial of a particular Judge? Must not they settle principles and rules, in which they are interested? In these enquiries must be frequently involved the powers of the Judges. They must decide what amounts to misbehaviour in office, in the extended sense of that word. In short, they may be called upon to examine and define the whole range of Judicial duties, and to pronounce what acts constitute a violation of them. It is not consistent with human nature, that the purest and firmest Judge should be free from all bias, sitting in such a case. It is unwise and improper, to expose any Judge to such a trial of his fortitude and his virtue. It is highly important, that the tribunals of the country should possess the public confidence in their justice and impartiality. This is particularly true, in relation to this court, which is to investigate the conduct, and punish the delinquency of men high in station and authority. The Judges of such a court should not only be free from bias or interest, but, like Cæsar's wife, they should be unsuspected.

But it is urged by the gentleman from Augusta, that it is important that the Judges should constitute a part of the court, that it may possess within itself that knowledge of the law, which is necessary to a correct decision. I do not think this a sufficient reason. The Senators are chosen from large districts of country, and we have a right

to suppose that they will generally be men of intelligence. In point of fact too, many of them always have been, and always will be lawyers; and after hearing a cause ably discussed by eminent counsel, (who will generally be engaged,) there can be little doubt, but that the Senate will be enabled to decide it with propriety. It is also worthy of remark, that the kind of offences for which impeachments are brought, are frequently in their nature political, and are more dependent on general principles than strict technical learning, as is explained in one of the numbers of the *Federalist* alluded to. The Senate, it appears to me, will be a competent tribunal, and I can see no motive which it can have to pronounce an unjust sentence against a Judge; and the requisition of two-thirds to convict, is a sufficient security against the influence of the spirit of party, or of those sudden impulses to which public bodies are sometimes exposed.

The gentleman from Augusta endeavors to obviate the objection to a supposed bias in the minds of the Judges, by saying that they would be restrained by the presence of the Senators, and of the able counsel who can scan their decisions, and by their sense of dignity and responsibility to public opinion. This argument is not inconsistent with, but rather pre-supposes an inherent bias in the minds of the Judges. It supposes that this tendency is fenced round by guards and securities, which will disarm it of its mischief. But to me, it seems better to take a tribunal originally disinterested, than to select one, which can only be rendered so by counteractions to its natural infirmities.

This part of the Constitution has never been acted on; and it is a remarkable proof of the purity of those concerned in the administration of our laws, that in fifty-four years not one individual has been prosecuted by impeachment.

Mr. N. said it always appeared to him, that the Constitution of Virginia was more defective in regard to impeachments, than in any other respect—and amongst other objections, is the provision which directs, that the Judges shall be triers of their brethren.

Mr. N. said he was decidedly friendly to the independence of the Judiciary, in the sense he understood that term. His votes in this body would prove this. He was for their tenure being during good behaviour, and he was against the removal of Judges without cause, as is proposed in some resolutions before this House. But whilst such was his opinion, he was equally opposed to their being irresponsible, or being above the law. It cannot be disguised, that considerable dissatisfaction prevailed in the public mind, as to the organization of the Judiciary Department. He trusted he was not more liable than others to be influenced by mere popular clamour; but in all countries, particularly in free ones, much respect is due to public sentiment; and it should have an influence, when we are called upon to revise our public institutions. The proper responsibility of Judges is called for by public opinion. To it, as well as that of every other public functionary, an efficient court of impeachment is essential—the people ask it at your hands. “If they ask for bread, will you give them a stone?” I answer, no. It is proper to guard their tenure of office from invasion, but to interpose no shield against just responsibility. I consider the Judicial Department as one of the most important in our Government; and I will give no vote which shall impair its independence, and I consider myself as acting as its real friend, when I wish to avoid placing it in a situation, in which, if it does not incur well-merited censure, it may be exposed to suspicion.

Mr. Campbell of Brooke, asked for the ayes and noes, which were taken accordingly and stood as follows:

Ayes—Messrs. Johnson, Duncan, Pleasants and Rose—4.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Goode, Marshall, Nicholas, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Trezvant, Claiborne, Urquhart, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Garnett, Cloyd, Chapman, Mathews, Oglesby, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Macrae, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Bates, Neale, Coalter, Joyner, Bayly, Upshur and Perrin—83.

The seventh and eighth resolutions were for the present laid upon the table.

Mr. Henderson announced his intention to move, on Monday next, the re-consideration of the vote of the Convention touching the mode of electing the Governor; and in the event of the success of the motion, that he should move two resolutions, which he held in his hand, as a substitute for the first, second and third resolutions of the Executive Committee.

Mr. H. stated that he came to the Convention holding the opinion that the people of the Commonwealth ought to elect their Chief Magistrate, in their proper charac-

ter; but that it was a part of his plan to clothe the Executive with a mass of power which it was now clearly ascertained this body was not willing to confer on him. This discovery, Mr. H. remarked, had greatly diminished his interest in the mode of election. He further said that, if the Legislature itself were a fair representation of public opinion, it must be obvious, as had been observed in his place the other day by the gentleman from Patrick, that the Governor elected by it would be, substantially, the Governor of the people themselves. For those reasons, Mr. H. remarked, that, although he still preferred the popular election, he was ready to yield his prepossession, provided any great object could be attained by it. He observed that cool reflection would satisfy gentlemen, that nothing in the way of reconciling the unfortunate differences of opinion which prevailed in the body upon the leading subject of its deliberations, could be effected without a spirit of frankness and manly concession. In this spirit, and in the persuasion, that the projet which the worthy gentleman from Richmond county would present, was fair and mutual, he, Mr. H. had the honour to announce his intention to make the two motions which he adverted to, and which were a constituent part of the plan of the gentleman from Richmond county.

On motion of Mr. Cooke, these resolutions were laid upon the table and ordered to be printed.

Mr. Neale said, that believing a spirit of conciliation and compromise now prevailed in the Convention, and beginning to hope that they should frame such a Constitution as would be acceptable to the people, and such as he should delight to see perpetuated, and trusting that his motion would be followed by others in the same spirit, he would offer the following resolutions, and moved that they lie on the table and be printed:

"1. *Resolved*, That the Senate shall consist of thirty-two members; nineteen shall be assigned east of the Blue Ridge; and thirteen west thereof. This arrangement to be permanent.

"2. *Resolved*, That the rule to re-apportion representation in the House of Delegates, shall be upon the resident freeholders of the Commonwealth: each freehold to be of an assessed value of not less than twenty-five dollars.

"The application of this rule, first to take place in the year 1835, and every twenty years thereafter. Provision to be made by law for ascertaining in 1834, the number of freehold voters possessing freeholds of the assessed value of not less than twenty-five dollars in the several towns and counties of this Commonwealth."

Mr. Cooke said, he had been aware that such a resolution was to be offered, and as at present advised, it was his purpose to vote for it; but he should reserve himself to take such course as circumstances might in his judgment render proper. He then offered the following:

"1. *Resolved*, That the Judicial power shall be vested in a Supreme Court of Appeals, in a General Court, in such Superior Courts as the Legislature shall from time to time ordain and establish, in the County Courts, and in the justices of the peace who shall compose the said courts. The Legislature may also vest such jurisdiction as may be deemed necessary, in Corporation Courts, and in the magistrates who may belong to the corporate body. The jurisdiction of these tribunals shall be regulated by law.

"2. The Judges of the Court of Appeals, of the General Court, and of the said Superior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment or public trust; and the acceptance thereof by either of them shall vacate his Judicial office. The said Judges shall be bound to perform any and all Judicial duties imposed on them from time to time by law, whether as Common Law Judges, or Chancellors, or both.

"3. The Judges of the Court of Appeals, of the General Court and of the Superior Courts, offending against the State, either by mal-administration, corruption, or neglect of duty, or by any other crime or misdemeanor, shall be impeached by the House of Delegates; such impeachment to be prosecuted before the Senate. If found guilty by two-thirds of the whole Senate, such persons shall be removed from office. And any Judge so impeached shall be suspended from exercising the functions of his office until his acquittal, or until the impeachment shall be discontinued or withdrawn.

"4. That Judges may be removed from office by a vote of the General Assembly, without the assignment of any cause whatever; but two-thirds of the whole number of each House must concur in such vote."

Mr. Clayton moved that the resolution lie on the table and be printed.

Mr. Doddridge submitted the following, which he wished should for the present lie on the table:

"*Resolved*, That all the resolutions adopted by this Convention, and proposed in it, be referred to a select committee of _____ members, to prepare and report, either a new Constitution, or amendments to the existing one."

On motion of Mr. Stuart it was ordered to be printed.

Mr. Campbell of Brooke submitted the following, which also was ordered to be printed :

"Whereas republican institutions and the blessings of free Government originated in, and must always depend upon, the intelligence, virtue and patriotism of the community ; and whereas neither intelligence nor virtue can be maintained or promoted in any community without education, it shall always be the duty of the Legislature of this Commonwealth to patronize and encourage such a system of education, or such common schools and seminaries of learning, as will in their wisdom be deemed to be most conducive to secure to the youth of this Commonwealth, such an education as may most promote the public good."

Mr. Stanard now moved the consideration of the report of the Committee on the Bill of Rights.

The first and second resolutions of the report having been read, after some further conversation, it was agreed, on motion of Mr. Doddridge, to lay the report upon the table.

The House then adjourned.

MONDAY, DECEMBER 28, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong.

Mr. Stuart moved the consideration of his amendment which he had offered to the second resolution of the Legislative Committee.

Mr. Gordon opposed taking up the amendment at all, as going uselessly to renew the discussion upon the basis.

Mr. Stuart did not intend any prolonged discussion, but wished to have his proposition considered, and to record at least his own vote.

Mr. Gordon, thinking it impossible the House could ever agree on any plan for future apportionment, thought they might as well make this a test question.

Mr. Powell asked, if the gentleman meant to apply the same remark to all the questions on the subject of representation?

Mr. Gordon would not pledge himself on this subject, but should vote on each question as it came up in such mode as he might judge right.

Mr. Doddridge said, the declaration of the gentleman from Albemarle was rather alarming. He did not conceive that the gentleman could have authority for declaring that no future plan of apportionment could command a vote of the House, and if the gentleman was disposed to affirm that nothing but his own proposition could be agreed to, it was possible he might find members in that House who would say that *his* proposition *should not* be agreed to. The gentleman from Patrick had brought forward this proposition some time ago ; and it was due to him, in courtesy, not to suffer it to be nailed to the table.

Mr. Gordon said, that the assumption of the gentleman from Brooke, was wholly gratuitous, and unfounded in any remarks which had fallen from him.

Mr. Doddridge thought the gentleman had said so, at least by implication. He had said that no plan for future apportionment could ever carry, and his own proposition pointed to present apportionment only : it seemed to follow that no proposition was to be adopted but his.

The amendment of Mr. Stuart having been read from the Chair,

Mr. Powell said, that as this was to be a test question, he should ask the ayes and noes ; and they were ordered accordingly.

The question on consideration was then put, and decided by ayes and noes : Ayes 47, Noes 38.

So the House agreed to consider it.

Mr. Stuart expressed much discouragement when he saw so large a number of respectable men voting against any future apportionment. He considered it one principal object of the Convention to equalize representation : the people would not be willing to give up the county system, unless in the prospect of putting the power of the State into the hands of a majority. But Mr. Gordon's proposition he considered as a mere enlargement of the system of county representation, and justly liable, in principle, to all the objections which applied to the latter. The question now was, not whether women, children, day-labourers and vagabonds were to be represented ; but, whether after the line had been drawn and qualified voters determined, they should be put on a level with each other ? whether they should have an equal or an unequal share in the Government of the Commonwealth ? He greatly preferred his scheme to that of Mr. Neale, which he thought would operate very unequally in practice.

He professed himself a friend to rational reform: and though he did not anticipate the same bloody result as the gentleman from Frederick, (Mr. Cooke,) in case of a failure of the new Constitution—yet he apprehended a state of much confusion, and he believed, unless some principle for future apportionment of representation was inserted in the Constitution, it would certainly be rejected by the people.

Mr. Neale declined interfering with the vote on this proposition, by advocating his own at this time.

Mr. Stuart observed, in explanation, that it was not his purpose, where the number of counties and of representatives chanced to be the same, that one representative should be given to each county; but only to the average counties.

The question was then taken on agreeing to Mr. Stuart's amendment and decided in the negative by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell and Stuart—42.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Marshall, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Macrae, Green, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—49.

The question then occurred on agreeing to the second resolution of the Legislative Committee,

But on motion of Mr. Gordon, it was laid for the present upon the table.

After some conversation as to the next subject to be taken up, it was at length agreed to consider Mr. Neale's proposition: which was thereupon read from the Chair.

Mr. NEALE rose and said:

Mr. President,—I little thought, when I submitted the resolutions in your hand, that it would be expected from me to support them by an argument; but I am told that I owe it to this body, and told this morning that it is expected from me. Surely, Sir, the propositions are of a character so naked, that discussion is not necessary to explain them in this enlightened assembly.

In taking up the subject, I feel at once the awkwardness of my situation. If I advance arguments proving the scheme will be beneficial to the East, I shall lose support in the West: on the other hand, if I prove that benefits are to accrue to the West, I shall be abandoned by the East. No sea-tossed mariner, who ever attempted to pass a strait like that of Scylla and Charybdis, was ever in greater difficulty. So that my propositions must either break down among the mountains, or must sink in the Atlantic. In this view of the subject, prudence admonishes me to silence—yet it is said that silence will not comport with the demands of Parliamentary decorum. So the peril must be encountered.

Mr. President, I am informed, that although my proposition has both Eastern and Western friends, yet it will have to resist more difficulties from the East. Then I briefly endeavour to prove, that the operation of the rule for re-apportionment of representation will be peculiarly beneficial to the East, and fair throughout the State.

Members of the East have argued, that the Right of Suffrage should attach exclusively to the landed qualification—this doctrine was adhered to as long as from adherence they hoped for success. Suffrage, however, has been extended to other classes as well as freeholders of the community; and in these several classes of suffragants is now lodged the political sovereign power of the Commonwealth—Consequently, they are to elect the members of the Legislature. The question then naturally arises, what shall be the future apportionment of representation, and to what shall it apply? It appears to me that no better rule can be adopted, than to measure representation by the whole number of the resident freehold voters, whose freeholds shall be of a *bona fide* value. In them mainly reside and abide the strength, the wealth, and the intelligence of the whole community. In looking to this subject, my mind is struck with the fitness, the beauty, the symmetry and the justice of the rule.

But my scheme is objected to by some, because I propose to have the Senate a permanent body. From this objection permit me to vindicate it, by a comparison of it with the plan of the gentleman from Albemarle, (Mr. Gordon.) His plan proposes to have both the Senate and the House of Delegates fixed and permanent.

Now, unless it can be proved that a half is equal to a whole, or that the exercise of a vicious principle in one branch of the Legislature, is equal to the exercise of a vicious principle in both branches, I shall not believe that my scheme is justly obnoxious to the objection, so long as the plan of the gentleman from Albemarle shall be considered

as a happy hit by a majority of this Convention—at least the objection should not come from any of the supporters of that plan.

Mr. President, I am not particularly anxious for the adoption of a rule for re-apportionment of representation, but for the hope that it would unite in harmony and peace, the conflicting materials of this Convention, and by consequence to render the amended Constitution, (provided it shall be a good one) to the willing acceptance of the people.

I believe, Sir, that the best rule which could be fixed upon, ought to be founded in white population and taxation combined—and were we to have another Convention, I think I may safely prophecy that the people would so direct it. But we have in vain attempted to establish that rule; and in its absence, I sincerely believe that my rule in the House of Delegates, associated with a permanent Senate, approximates very nearly, if not equally, to the excellence and fairness of that rule which is founded on population and taxation.

I promised to prove to gentlemen of the East, that by the operation of my plan, no ill would accrue to the East. I will endeavour to redeem that promise.

Although there are six or seven millions of acres of land West of the Blue Ridge more than the East, yet a single glance at the geography of the Western region uncontestedly proves, that there cannot be more, if as much land there, as there is in the East, calculated for the profits and purposes of agriculture. It is true that the assessed lands of the West exceed those of the East in quantity, according to the Auditor's tables. But who does not know that a very great *quantity* of that assessed land, is wholly unfit for human use, and not desirable as haunts for wild beasts? But let us assume that there is an *equal quantity* East and West, fitted for the habitation and enjoyment of man, and this is very fair for the West, can you then doubt, Mr. President, that from the very face of the Eastern country, and the character of its soil, it is capable of, and will necessarily be cut up into smaller freeholds in the progress of time, much greater in number than the lands of the West?

Again: The lands in the East are assessed for taxes to the sum of \$74,000 more than those of the West. This fact indicates the conclusion, that the Eastern lands are more valuable: and consequently, capable of containing a denser population.

Let us now see what relation the whole white population of the West bears to that of the East. To 1829, the white population of the East is stated by the Auditor to be 362,000, that of the West to be 319,000—and the difference between East and West as to the white males above the age of sixteen years, is 12,000 in favour of the East. Now, Sir, what is to become of these white males? Will they not necessarily, from all the advantages at hand, soon become freeholders, and thereby augment the existing majority of the East?

It is a fact somewhat curious to know, (and I believe contrary to ordinary opinion,) that the ratio of freeholds to the white population of a slave-holding community is much greater, than to a community of white population. I acknowledge that my impression was, that freeholds would multiply faster in a non-slave-holding community. But the fact is not so.

On the West side of the Ridge, there are 319,000 white people, and 35,887 freeholds: On the East side there are 362,000 white persons, and 56,846 freeholds. If the ratio of freeholds were equal, the West should contain about 49,000 instead of 35,887—so that the slave-holding community is gainer upon the existing population East and West, nearly 14,000 freeholds. This fact is important, to test what will be the probable future operation of the rule to re-apportion representation.

How stands the fact, if the rule were applied at this time to *all* the freeholders of the Commonwealth? In a House of Delegates to consist of one hundred and twenty-seven members, the West would be entitled to forty-nine and a half members and the East to seventy-seven and a half members.

It may be asked, what would be the probable result, if the rule was applied to the particular class of freeholders contemplated to be embraced by it? A calculation has been made; and it may be proper to state the *data* upon which it was made. A few land lists of counties East and West were indifferently taken, and carefully examined: upon that examination, it appeared that there were more small freeholds under the value of \$25 to the West, than in the East. So, that upon any scheme applied now to a House of one hundred and twenty-seven members, the West would get forty-eight and the East seventy-nine, leaving a majority of thirty-one members to the East, and by the plan of the gentleman from Albemarle, there is a majority of twenty-one only. Favorable as my plan seems to the East, it would be still more so, if an accurate Census was taken of the *bona fide* resident freeholders, whose freeholds are of the value of \$25 each: for, Sir, it must be admitted, that there are many more non-residents of the West, entitled to land there, than there are non-residents of the East, owning land in the East.

It may not be amiss to state, that the operation of the Statute of Descents will have the inevitable tendency to augment the number of freeholds in a ratio greater in that portion of the State where the population is greatest.

In apportioning representation upon *bona fide* landholders, the hardy yeomanry of the country, the absolute owners of the soil, the rule omits to cover the labouring classes of the West and of the East; and this consideration surely, is well worthy the reflection of the Eastern delegation.

It has been said, Mr. President, that the increase of white population is such to the West, that in the course of some twenty or thirty years, it will exceed that of the East. Let us examine whether this conjecture be founded on facts.

From 1790 to 1800, West of the Blue Ridge, the average increase was $51\frac{1}{2}$ per cent.; from 1800 to 1810, the average increase was $24\frac{1}{5}$ per cent.; from 1810 to 1820, the average increase was $19\frac{1}{2}$ per cent.—We have no Census since 1820. But let us pursue this decreasing increase of population from the facts presented—and I will premise that to the West, as in every other country, the increase of population will gradually lessen as the country fills up. But suppose the increase for the last nine years to be 13 per cent.—by the same average of decreasing increase, ten years from this period will make it 7 per cent.; and ten years more will reduce the increase of the West to what it now is in the East, and probably less—for, such is the nature of the soil and its surface, that a much denser population may inhabit the Eastern region than in that of the West. In this view of the subject, the white population of the West even in the gross (and never when counted as freeholders) will hardly ever exceed that of the East. Then, Mr. President, why should the East object to this rule for re-apportionment? We should refuse to adopt a rule, and thereby lay the foundation of the call of another Convention. I hope we shall not, Sir: For, if the amended Constitution be a good one, let us unite to render it as perpetual as human wisdom can devise.

But, Mr. President, suppose in the lapse of some eighty or one hundred years, the political power in the *House of Delegates* should, upon my rule, pass to the West—we shall have no cause to complain—for, with the increase of the number of their freeholds and population, there will be a correspondent increase of the amount of taxes paid by them; and in the mean time, the jealous and censorious passions of the whole community, will be hushed into harmony and fraternal love. If it be true that this state of political quietude and happiness shall endure no longer than some eighty or one hundred years to come, let us be satisfied: for, unhappily for mankind, few Governments of the world have had the good fortune to endure for a term of years so long.

Mr. President, it has been further objected to my plan that frauds will be practised in the West in the creation of the freeholds, owing to the great quantity of waste lands in that region. I do not feel the weight of this objection. The freehold is to be owned by a resident freehold voter, and its value is to be not less than twenty-five dollars. The Legislature is to provide by law for ascertaining the number of such freeholders, and will surely guard against fraudulent practices. I can more easily imagine that in the annual general elections, much excitement in favour of particular candidates, might and has produced attempts to create votes for the particular occasion. This rule of re-apportionment is to apply only once in every twenty years; and I cannot believe that the expense of writing and recording of deeds will be encountered with a view to the increase of political power, at a time greatly remote; when, in all probability, the actors in this fraudulent combination might reasonably calculate, that before the fruits of their iniquity could be gathered, they themselves would cease to exist. Sir, frauds of this kind, to be effectual in the increase of political power, must be very general; and consequently a great number of persons engaged in them. Could such a state of things escape public detection? and would not that detection be followed up by public scorn and by public punishment?

It is to my mind very singular that objections should come from the East to my plan. For, Mr. President, suppose after all, in the course of many years to come, it should be found that under the operation of the rule which I have proposed, the majority of the House of Delegates should come from the West of the Blue Ridge; have we not safety and a guarantee in the permanency of the Senate? I am satisfied from my best reflections that the East, from the nature of things, will continue to retain the power in the Lower House, and from my scheme, they can never lose it in the Senate.

From the arguments offered, I should think that my scheme will be accepted by the East, if the West will agree to take it.

1. Because the lands East of the Ridge are more capable of being divided and subdivided into small freeholds than the lands of the West: and that there is land assessed in the East to the sum of \$74,000 more than land to the West, from which fact we may infer its superior capacity to contain a dense population.

2. That there are 12,000 males above the age of sixteen years, more than in the West, most of whom will sooner or later become freehold voters.

3. That freeholders multiply faster in a slave-holding community than in a non-slave-holding community upon the same amount of white population. The East has more population now by 50,000, at least.

4. That the decreasing increase of population in the West is such, that in a short time, if it be not less than the increase of the East, it will not be greater.

Mr. President, before I conclude, permit me to put this question to you, and through you, to my Eastern friends of this body—and I put the question emphatically. Suppose, Sir, some few weeks past our Western brethren had offered to give to us a permanent Senate with a majority of six members, provided, we would give to them a rule of re-apportionment, such as I have proposed—think you, we would have refused it? No, Sir—we should have thought it fair and honorable then, as I think it fair, honourable and just at this moment.

You will remember, Mr. President, that when I offered my resolutions, there were two others offered at the same time, one by the gentleman from Frederick, (Mr. Cooke,) and one by the gentleman from Loudoun, (Mr. Henderson,) on the subject of the Judiciary and Executive Departments of Government. By my resolution a fair rule for re-apportionment was contemplated—by Mr. Cooke's, the degradation and injustice to the Judiciary were intended to be avoided, and by that of Mr. Henderson a small Council was to be preserved, and the election of Governor to be given to the Legislature—and these several propositions were intended by the movers to be dependent propositions.

Mr. President, if my resolutions are lost, it must be because the West think them unfavorable to their interests, and the East consider them injurious to their political power—and if each apprehends ill, all may reasonably anticipate good.

Mr. Scott then rose and addressed the House as follows:

I had hoped, Sir, that this agitating question was settled, so far as it can be settled by a vote of this House. If it is again to be disturbed, I know not what we can consider as settled, until the final vote is given, and the Convention has adjourned.

When the various departments of the Government were referred to the select Committees, this question stood foremost, and engaged the attention of all. When the House went into Committee of the Whole on the reports of the select Committees, this all-absorbing question was first taken up, and debated week after week, with all the ardour and ability which the deep interest which it involves was so well calculated to bring forth. The Convention was divided into two almost equal parts, and the people became agitated and inflamed; when my friend from Albemarle, to use his own words, "in order to sink the discussion," laid upon the table his plan for a present apportionment of representation, without looking to the future. After it had been in possession of the Committee of the Whole for some time, and several fruitless attempts had been made to agree upon another scheme embracing both a present and future apportionment, it was taken up and adopted by a more decided majority, than we hoped could be united on any proposition, connected with this all important question. A rule of future apportionment, presented by the gentleman from Northampton, was engrafted upon it; but was disagreed to by the House by an almost unanimous vote. Various other schemes for future apportionment, were proposed from both sides of the House, and all of them rejected, and finally the plan of the gentleman from Albemarle was agreed to by a decisive majority; and the Convention passed to the consideration of other subjects. If this question, therefore, is not to be considered as settled, it cannot be said that we have settled any thing. I, for one, have so considered; and I regret that my friend from Richmond county should have disturbed it. [Mr. Neale explained.] I am not ignorant of the motives which led my friend to take this step—although not stated to the House in the remarks which he submitted in support of his proposition, he had explained them to me. I duly appreciate them; yet I regret that he has felt it his duty again to agitate the Convention by bringing up this subject.

Mr. President,—The plan before us does not profess to provide for a present apportionment. It is designed to engraft it on that of the gentleman from Albemarle. It must, therefore, be considered in connection with that plan. It is objected to that plan by gentlemen from the West and from the East also; and amongst the latter is my friend who sits near me, (Mr. Leigh,) that it is defective in not providing a rule for the future apportionment of Representation; that this defect will generate discontent amongst the people, and so far from sinking the question of the basis of Representation, it will keep it alive; that hostilities will immediately re-commence, and will result in a new Convention, or a separation of the State. I ask the gentlemen from the East, in what part of the State is it that they expect these discontents to arise? From what quarter is this war to be waged? They answer, from the West. I will ask them if they would be willing to adopt our own favourite basis of Representation, the Federal number, or population and taxation, as a rule of future apportionment, if such a rule would not be more objectionable to our Western brethren than no rule whatever, and by consequence produce greater discontent, and have a stronger tendency to bring about another Convention, than the plan of the gentleman from Albemarle. I would ask gentlemen from the West, if they could succeed in adopting *their* favourite, the white basis, if it would produce no discontent in the East?

If it is expected, that we of the East would not make war on a Constitution, containing such an obnoxious principle—one which we think is opposed to the best settled principles of Representative Government, and subversive of our dearest interests? Sir, we should be more or less than men, if we did not. There is yet a majority of white population East of the Blue Ridge. We should for a time have the command of both Houses of the Legislature on any basis. We could wield that powerful engine to effect our purposes—we could use it as the legitimate means of securing our safety, by expelling the odious principle from the Constitution; and in my judgment we should act unwisely if we did not do it. Sir, the difference between the East and West would be this—the West could do nothing without a revolutionary movement of the people, whilst we of the East could effect our purposes, by the very means which organized this Convention.

These reflections have brought my mind to the conclusion, that in the present excited state of this House, and of the people, it is better to provide no rule of future apportionment, unless, indeed, we could hit upon one which would unite a large majority of the House and tranquillize the public mind. I confess, I see no prospect of such a result. Let us examine the operation of the plan of the gentleman from Albemarle, upon the different divisions of the State, and see whether it is likely to produce the effects which are apprehended.

The causes which led to this Convention were various. The unequal representation in the Legislature, was one of them. "Great as that inequality is, it would not of itself have been sufficient to overcome the opposition to the call of a Convention." A desire to extend the Right of Suffrage, complaints against the Judiciary, whether well or ill-founded; but their aid and their united force was barely sufficient to overcome the repugnance of the people of Virginia, to a change of their fundamental law. On the subject of Suffrage and the Judiciary, we have gone far enough to satisfy the most ardent friends of reform. And the apportionment of representation proposed by the plan under review, does substantial justice to every section of the State.

The complaints of unequal representation came from the Valley, and that part of the Middle country which borders on the Blue Ridge, comprising the counties which touch the mountain and the counties of Henry, Pittsylvania and Campbell. The remaining counties composing the Middle section have little cause of complaint on this score, and were generally opposed to a Convention. Let us then compare the situation of the Valley and Middle country and the counties just mentioned in particular under the existing Constitution, with their situation under the proposed plan. The representation of the Valley in the present House of Delegates, is about one-eighth of the whole number; by the proposed plan, it will be increased to about one-fifth. That of the whole Middle country is about one-fourth; it will be increased to one-third. The representation of the fourteen counties immediately below the Ridge, is about one-eighth; it will be increased to about one-sixth. These counties, by uniting with the West, will give a majority against the East of twenty-three. By uniting with the East, they will give a majority of twenty-one against the West. In the present House of Delegates, the trans-Alleghany country by uniting with that below the head of tide-water, will give a majority of forty-two against the Valley and Middle country united. Upon the proposed plan, the Valley and Middle country will have a majority of one. We may, therefore, well hope that this great accession of strength to that portion of the State which extends from the head of tide-water to the Alleghany mountains, will, when the excitement which the discussions in this House have produced, shall have subsided, when the salutary effects of this change on the local interests of that region shall be felt, cause the people who inhabit it to be content. The people of the fourteen counties forming the upper division of the Middle country, must be satisfied. In their hands will be placed the balance of power between the East and the West. It was by the union of these counties with the West, that a majority was obtained for the call of a Convention. Ample justice is done to the country West of the Alleghany. If complaints are heard from that quarter, they will be without a cause. Unaided by the Valley and Middle country, they never can disturb the repose of the State.

Neither has the extreme East any cause of complaint, or just ground of apprehension. Their own favourite basis of Representation would place the balance of power in the same hands. The numbers which it would assign to the East and West respectively, would indeed be somewhat different. But the counties at the Eastern base of the Blue Ridge, would still hold the balance between East and West. In their hands it may be safely placed. They pay as large a proportion of taxes, and hold as large a proportion of slaves, as any other parts of the State. When they tax their neighbours, they tax themselves also. They have a deep interest in all the laws concerning slaves. On the subject of Internal Improvement, they have an interest common to the East and to the West. The amount of their contributions to the public purse, will prevent them from embarking in what we consider the wild and extravagant schemes of the West. Their distance from market, and the value of their pro-

ducts, make it necessary for them to construct roads, and improve the navigation of their streams. Single-handed, they can do nothing. They can control the East, only by uniting with the West. They will, therefore, necessarily be led to unite with the West in a moderate system of improvement, alike beneficial to every part of the State.

Sir, you have the best, the only safe guaranty against the abuse of the power confided to them—the guaranty of their interest. I have thought it proper to lay before the Convention what I consider the advantages of the scheme of the gentleman from Albemarle, before I examine that of my friend from Richmond county, which is intended as an appendage to it. Permit me now, Sir, to call the attention of the Convention to that scheme. His first resolution proposes, that out of thirty-two Senators, thirteen shall be assigned to the country West of the Blue Ridge, and nineteen East; that this apportionment shall be permanent. All the objections urged against the scheme of the gentleman from Albemarle, apply to this feature of that now under examination. The rule of future apportionment, which is proposed for the House of Delegates, will either increase the preponderance of the East in that House, leave things as they are, or transfer the preponderance in that House to the West. If it operates no material change, it will render the plan to which it is to be appended, in no respect better. If it increases the preponderance of the East, it will increase the discontent of the West. If it transfers the preponderance to the West, it will introduce the elements of discord into the Halls of Legislation, and prove fatal to the repose of the State, and ultimately wrest from the East the protection which is proposed to be given by the permanent Senate.

Upon what is this proposed rule of future apportionment founded? It is not founded on population, nor wealth, nor taxation. It is said to be based upon land. Will its operation be effected by the quantity of land in the several counties? No. On the value? No. By the taxes paid on land? No. What then? Why, it will depend on the number of resident freeholders owning freeholds worth twenty-five dollars. In other words, the number of Representatives which a county will be entitled to, will depend on the number of divisions of the value of twenty-five dollars and upwards into which accident may have cut up its territory, and the tenure by which those divisions may happen to be held. They will bear no proportion to its population, black or white—none to the extent or value of its territory, nor to the taxes paid by its inhabitants. It will depend on circumstances purely adventitious. Sir, such a scheme is at war with all former notions of Representative Government, and if applied in practice, be the most variable in its results of any that has ever yet been dreamed of. In support of these remarks, let me ask the attention to a survey of a few of the counties in the different sections of the State. If we compare Western counties with the Valley counties, and with each other, Eastern counties with Western counties, and with each other, we shall find the results equally variable and unsatisfactory. We are furnished by the Auditor with a statement, shewing the number of persons charged with tax on lands, in parcels not less than twenty-five acres, in the several counties, and in lots and parts of lots, in the several cities and towns. Their value is not stated, but I learn from a gentleman in my eye, (Mr. Joyner,) that he has examined the commissioners' books, and the number which falls short of the value of twenty-five dollars, is so inconsiderable, as not to be worth notice. Those of less than twenty-five acres, and of the value of twenty dollars, will probably not materially vary the result. From that document it appears, that the county of Kanawha, with a white population of 7,593, and 1,527 slaves, and paying a tax of \$1,735, has but 615 freeholders; whilst the county of Cabell, with only 4,772 whites, 485 slaves, and paying a tax of \$934, has 804 freeholders. The county of Randolph, with 4,372 whites, 234 slaves, and paying a tax of \$614, has 978 freeholders; while Ohio, with 15,588 whites, 274 slaves, and paying \$3,438, has 1,026 freeholders. The county of Jefferson, with 10,327 whites, 4,248 slaves, and paying \$5,778, has 856 freeholders; whilst Randolph, with less than half the white population, about a twentieth part of the slaves, paying one-ninth of the taxes of Jefferson, has 976 freeholders. Morgan, with less than one-fourth as many whites, one-thirtieth as many slaves, and paying one-tenth as much tax as Jefferson, has nearly half as many freeholders. The county of Campbell, including the town of Lynchburg, has 10,362 whites, 9,751 slaves, pays \$9,771 in taxes, and has about 1,400 freeholders. Wood, with half the white population, one-fifteenth of the slaves, and paying one-tenth of the taxes of Campbell, has 1,054 freeholders.

The county of Fauquier, with 13,226 whites, 11,301 slaves, and paying \$8,317, has 1,123 freeholders. The neighbouring county of Culpeper, with 11,166 whites, 9,226 slaves, and paying \$6,585, has 1,433 freeholders. And the county of Patrick, with about one-third as many whites, one-eighth as many slaves, and paying one-ninth as much tax as Fauquier, has 944 freeholders. Jefferson, with 10,357 whites, 4,248 slaves, and paying \$5,776, has 856 freeholders. Princess Anne, with 5,382 whites, 3,944 slaves, and paying \$2,754, has 1,047 freeholders. It is unnecessary to

pursue the comparison farther. Before quitting the subject, however, I beg leave to call the attention of the House to the peculiar condition of the country West of the Alleghany, and the materials which were afloat for the manufacture of freeholds, real and fictitious.

Mr. President.—It is not for the purpose of instituting any invidious comparison between the East and the West, that I invite this examination. I judge of men on the same principles, whether they be planted on the plains of the East, or amidst the mountains of the West. It is our duty to guard against the evil tendencies of our nature.

We are taught by the lessons of Divine Wisdom, to pray that we be not led into temptation.

The county of Kanawha contains, according to Boye's Map, 1,337,600 acres. There are assessed for the payment of taxes in that county, 2,990,566 acres of land. The county of Lee, by the same Map, contains 327,650 acres. There are assessed for the payment of taxes in that county, 1,510,557 acres. Randolph contains by the Map, 1,319,040 acres. 1,639,331 acres are entered on the commissioners' books. Russell contains 576,510 acres. 1,268,275 acres are assessed. The county of Scott contains 399,360 acres. 609,644 are assessed. Tyler contains 547,260 acres. 935,517 acres are entered on the books of the assessors. The lands in this region, to use a familiar phrase, are shingled with patents. The quantity of land in these six counties alone, according to the Map, is 5,297,650 acres. The quantity on the commissioners' books, is 5,291,426, making an excess of 3,053,506 acres of land patented and classed, over and above actual acres of the counties. We have been told, both in and out of this House, that for the mere purpose of turning a county election, freeholds have been manufactured by the hundred out of the wild lands of this mountain region. The pages of your statute book shew us, that it has been deemed necessary to enact laws to prevent frauds of this character in all parts of the State. If such frauds are committed for the trivial purpose of electing a member of the House of Delegates, what may we not expect when they are to decide the contest for power between the East and West?

Mr. President.—The best reflection which I have been able to bestow on this subject, has confirmed me in the opinion, that in the existing state of things, it is best to adopt the plan of the gentleman from Albemarle, and leave the future to take care of itself. I consider it a happy feature in that plan, that it does not look to the future. I feel well assured, that any attempt to amend it with that view, can only serve to divide and distract us. No body of men can ever be in a worse temper to perform that important task, than we are. The people cannot well be in a more inflamed state. I trust and believe, that after those heats have had time to subside, the people will be satisfied. The knowledge, that the present arrangement is unchangeable, except by a revolutionary movement of the people, will go far to preserve us in quiet. If the House shall differ with me in opinion on this point, and determine to adopt some rule for the future, I think it perfectly clear, that the plan of my friend from Richmond county, should not furnish that rule.

Mr. Cooke insisted that most of the objections of Mr. Scott were founded on a misapprehension of the meaning of the proposition which contemplated not all, freeholders, male, female, minors, &c., but only such freeholders as were entitled to vote: and he suggested to Mr. Neale a modification of his amendment, so as to avoid ambiguity on this subject.

Mr. Neale accepted the modification.

Mr. Scott insisted that all the objections he had urged, applied still and even with additional force.

After some farther remarks by way of explanation from Mr. Neale,

Mr. M'Coy declaring himself friendly to the general principles of the proposition, wished to see it modified and extended to the Senate. He accordingly moved to amend it so as to read:

“Resolved. That the rule to re-apportion representation in the *Senate and House of Delegates* shall be upon the resident freeholders of the Commonwealth.”

Mr. Doddridge said he had reason to believe that in this shape the proposition would be acceptable to some gentlemen from the Eastern part of the State, provided it was so modified as to require not constructive but actual possession of the freehold.

The question then being about to be put on Mr. M'Coy's amendment to the amendment,

When Mr. Marshall rose, and enquired of the Chair, whether it would not be in order to move to lay the resolution and amendment on the table?

Being answered in the affirmative by the Chair,

He said he should make that motion. Mr. M. observed, that he should be greatly relieved, if he thought with the gentleman from Fauquier, that the vexed question of representation, had been settled to the extent that gentleman seemed to suppose, and that the plan which went no farther than a present apportionment, had received the

support of so decided a majority, and as he believed would continue to receive it. It would remove much of the difficulty which attached to the general subject, and would seem to convey the assurance, that the body would be able yet to agree upon something. He did not, at this time, feel as if this had been so far settled. The vote in favour of the plan of the gentleman from Albemarle—and to which he presumed the gentleman from Fauquier alluded—had been given, while another proposition, providing for future apportionment, was still before the House. The gentleman seemed to take that vote as an expression of the opinion of a very decided majority, that there should be no future apportionment provided for: but he did not so consider it. And when the proposition of the gentleman from Northampton, (Mr. Upshur,) was afterwards voted out, he considered that, not as a vote, declaring that the Convention would lay down no plan for future apportionment, but only as rejecting that particular form of it. No vote whatever, as he understood, had yet been given, directly on that point; nor had the plan, proposed by the Legislative Committee itself, yet been rejected by the Convention.

The question, in relation to a future apportionment of representation, was, therefore, yet undetermined. And he could not say, that any proposition, containing a proposal on that subject, would certainly be rejected by the House.

While that question remained open, he felt great difficulty in saying how the House might vote on the present proposition, should some plan for future apportionment be finally agreed upon. Should such plan be adopted, it must of course be looked to in all other measures on the general subject; but if it was to be taken as certain, that no plan for the future was to be admitted, then the House could act upon that knowledge. He had no such knowledge, and could not act upon it. He did not know but he might prefer the present proposition to any which had been offered, if a plan was to be agreed upon respecting the future: but if none was to be agreed to, then he might vote *against* this as a present arrangement. In the one case he had to compare one plan for the future, with another plan for the future, and to choose between them: but in the other case, he had to choose between a proposition for future apportionment, and rising without doing any thing. He should act very differently in the one case from what he should in the other. It was impossible to look without extreme reluctance, and extreme mortification and apprehension to the rising of the Convention without having been able to effect any thing. It behoves them all to consider the situation in which they were placed. The eyes of the world, (that was, of so much of the world as cared for matters of this kind,) were turned in a considerable degree toward that Convention. The question whether men were capable of framing a form of Government for themselves in some measure depended for its solution upon the decisions of that body: certainly the general opinion on that question must be affected by them. But were the eyes of the Union alone fixed upon them, it was a serious subject of reflection. Those eyes looked at them with great solicitude. The eyes of Virginia with an anxiety still greater, as was manifest from her having placed in this body men in whom she had long reposed her utmost confidence; and which must be the result, should such a body rise and do nothing. It could not be because there was nothing to do. There are none who pretended to say that—all admitted that great changes, or at least considerable changes might be made in the Constitution for the better. All seemed to think there was much to do. If they rose, therefore, having done nothing, it would be manifest and undeniable that it was because they were unable to agree on any thing. How humiliating! He repeated, therefore, that if the question were put to him, "Shall the Convention rise without adopting any thing, or shall it adopt any plan of future apportionment?" he should be very differently situated from what he would be if asked "whether this plan or that plan of future apportionment were to be preferred?"

Mr. Randolph said, he had nothing to do with what disposition the House might make of the question; but he rose as one individual, the humblest member of the body, solemnly to deny that he ever had admitted, or ever could admit that the Government of Virginia as at present existing, required *great* changes. He admitted that it might need some very *small* changes—and had so declared more than once. He had now risen to take himself out of the general and sweeping assertion of the gentleman who had just taken his seat. He had never, at any time, made the admission which the gentleman had ascribed to all the members of the body.

Mr. Marshall said he must have misunderstood the gentleman from Charlotte—and he certainly had misunderstood him, as to the meaning of the terms *great* and *small*. He should not have ventured to include that gentleman in any general declaration, unless he had understood him as so expressing himself. The gentleman had said he was content to strike off one-half the number of the Legislature: he had also said that he was content to make changes, which he had not defined in the Judicial Department. Now, said Mr. M., I confess that when I said there was no gentleman who did not admit that great, or at least considerable changes ought to be made in the Constitution, I did understand the gentleman from Charlotte, as having proposed

very considerable changes. If he did not so understand them, then I attached to the changes an importance which he did not. I have no doubt there is no member of the body unwilling to make what I consider very considerable changes in the Constitution.

Mr. Mercer said, he rose to express his concurrence with the gentleman from Richmond, in the views he had expressed, and to confirm them, if indeed they needed any confirmation, by the statement of two facts, one of which had occurred on that day, the other on the Saturday week previous. The vote had been given that day on the question, whether they should endeavour to fix upon some future arrangement as to the basis of Representation, and which had been expressly taken as a *test question*. And on Saturday week the gentleman from Augusta, (Mr. Johnson,) had declared that while he should vote in favour of the proposition of the gentleman from Albemarle as a present arrangement, he was not to be considered as being precluded from voting afterward in favour of a plan for future apportionment. As well as he recollected, the gentleman over the way, (Mr. Stuart,) had voted with the gentleman from Augusta. Mr. M. said, he could not regard the question of the basis as settled: if it was settled, it had been settled on no principle at all; or if any, it was on the white population of 1820: could any one believe that after the lapse of nine years the same basis existed at this day?

Mr. Randolph said, that nothing but the high respectability of the gentleman from Richmond, and the great weight justly attached both there and elsewhere to whatever he might say, could have induced him to have risen, to have taken himself out of the general and sweeping remark, that gentleman had made. He wished to stand *rectus in Curia*. Whether his having been willing to reduce the number of the House of Delegates to one-half of what it now stood at, was consenting to a *great* alteration in the Constitution or not, it certainly involved no change in the *principles* of the Constitution. For, that gentleman was too good a reasoner, and too good a mathematician, not to know that if from equals, equals be taken, the results will still be equal. So as to reducing the Executive Council to one half its present number, it still left that body in its full vigour, and bearing the same relation to the Governor and holding the same place in the Government of the State, as it now did.

There was, however, another point in respect to which he had been and still was willing to change the *principle* of the Constitution—he meant that principle of it which related to the tenure of the Judge's office. As God shall judge me, said Mr. R., I do believe that if the pillars of the Constitution are to give way and the whole edifice to come down, it is by the Sampsons of the Judiciary: Sampsons omnipotent for mischief, but impotent as to good. I see with pain that the clause proposed to be stricken out, is still retained. The complaint of the people is, that the Judges are all willing to receive their salaries, but not to perform their duties—and that the hire is as worthy of the labourer as the labourer is worthy of his hire. It is in this point only, that I am willing to change the principle of the Constitution. I was as much wedded, shall I say? What shall I say? As much *bigotted* to the independence of the Judiciary as man ever was—but the Judges themselves have forced open my eyes—and while I hold him to be a bigot in politics, who, after an evil has been shewn to exist, and to be a great evil, and the remedy for it has been proved to be effectual, will still refuse to apply the remedy, so he is the wildest and most reckless of innovators who acts on the converse of the principle, and adopts the proposition I object to.

Mr. Giles rose to explain to the worthy gentleman from Richmond the principles he had contended for himself. He was as content to avoid innovations as any member of the Convention. But he had said he was willing to go into them to a certain extent: and the question, whether that was a small or a great extent, must depend on the ideas gentlemen might entertain as to the importance of the changes he was willing to make.

He had been willing to commence with a modification, but not with the destruction of the Executive Council. He was prepared to lessen the number of that body. He had also been willing to reduce the number of the members of the Assembly—though on that point he was not so solicitous as some. He also desired to see some changes in the Judicial Department. But what he had risen to remark was, that he had *pledged* himself to go *farther* than this, if thereby he could produce any approach to unanimity.

He had very early given this deliberate and well considered intimation. But he hoped and trusted that he should not be urged to go to lengths which were improper. Let us not, said Mr. G. tear down the noble fabric, lest, after all, we should go home and do nothing more. He was alarmed at that idea: let them be cautious lest they pushed their reforms to the destruction of the fundamental merits of the Constitution. Yet, as he had once before said, there was a peculiar and to him a very great consolation in the reflection, that if they should have done nothing, they would thereby have done a great deal: they would have refused to pull down that which had appeared excellent to better judges than they seemed to be.

He was not so much alarmed at the idea of doing nothing as some gentlemen were : and they ought not to let that fear carry them too far. He concluded by declaring that he felt a strong and an increasing spirit of conciliation ; which he hoped would be reciprocated by others. He should vote to lay the resolution and amendment on the table for farther consideration.

Mr. Coalter said, that he was one of that Judiciary against whom it had been said that they were willing to receive their salaries, but not to labour for them. He rose to state that he was one of the men of that Judiciary against whom that charge could not be made good.

[Mr. Randolph here interposed and said, he believed there was a majority of them in that situation.]

Mr. Coalter resumed. The charge ought to rest rather on the Legislature than on the Judiciary. He had long wished and sought to be brought before the Legislative body with his papers. He had been a Judge of the Court of Appeals now for ten years. During a great part of that time he had risen regularly at three o'clock in the morning and worked till night : and during the residue he had worked from Court hours till three in the morning, (as long as he could see any light in the chambers of the representatives, who were no doubt busy in their rooms on the public concerns.) He had worked every Sunday : the hardest on that day : and he had picked out the causes of the widow and the orphan, because he considered that as God's work. The whole Legislature, with a committee as an overseer, never should have driven him to that : but he saw that ruin was likely to ensue from bad legislation, and he had volunteered to do what no man should have compelled him to attempt. The Legislature sent to the Court of Appeals matters on which he would get better judges on Carey street than he was. He knew nothing of book-keeping. The utmost extent of his skill in that way was to charge fifteen shillings on his book for a fee, and credit it if ever he chanced to get the money. They sent there cases which engrossed three-fourths of the time of the Court, in which there was no question of law involved : matters of fact to be ascertained. One case had been sent there by the Legislature, the decision of which produced a greater delay of the Judicial business of the Commonwealth, than if the doors of the Court of Appeals had been shut up for twelve months ; and yet all the law points involved, would not have occupied the Court thirty minutes. A stout negro man could not carry his papers from one Judge's chamber to another, and he had to use a wheelbarrow for the purpose ; and not a point of law in the matter. He thanked gentlemen for relieving that Court from such outrage as this ; for, he understood they were going to be relieved by the Legislature : the business was going to the Superior Court of each county, where it was likely to sleep forever. There had been a great cry against the Judiciary : but if they would give them back the good old Circuit Court system, and send up the law questions to the Court of Appeals, they would be able to discharge the whole of their duty in four months of every year. Mr. C. said he could not, and would not sit there, and have that body, of which he was a member, openly trampled upon. He had long been anxious, that the Legislature should send for him to their bar. He was willing to receive his salary ; but he was also willing to do four times the work for which it was intended to be a compensation. He had all the papers still by him, ready to produce, from the first day he went upon the bench, and he defied any man to shew that he had not done his duty.

Mr. Fitzhugh said, he was at a loss to understand the object of the gentleman from Richmond, (Mr. Marshall,) in wishing to lay this subject on the table. If the gentleman desired farther time to consider it, he was most willing to accord it to him. Or if it was to have any question thereby settled, he should not object to it ; but it could lead to the settlement of nothing, so far as he could perceive. If the worthy gentleman had any proposition of his own to offer, Mr. F. would listen to it with all pleasure. But the moment the question should be finally settled, that there was to be no principle of future apportionment in the new Constitution, that moment his mind would be made up to vote against any Constitution that might be agreed upon.

Mr. Marshall said, that nothing was more obvious than that the proposition of the gentleman from Richmond county, (Mr. Neale,) would not at present receive the support of any part of the House. He thought it was not difficult for any one to say that it would be decided in the negative. Now, he was not willing it should be negatived until he should better know what would be the future course of the Convention ; he wished it to lie on the table until that could be determined. If obliged to vote now, he should vote against it : at a future moment he might be willing to vote in its favour.

Mr. Scott said, he was sure he could not have been misunderstood when he had said that he considered the question as to a basis for both Houses as settled. He knew the House had not given any direct vote upon the naked question, whether there should be any future apportionment or not. But he considered the question as to an arrangement for present apportionment as having been settled directly, and the other

substantially and in effect: because the deliberations of the House had been directed to both. Scheme after scheme for future apportionment had been offered and as regularly failed; and it had appeared to him that any attempt to settle a rule for the future must prove abortive; and therefore he thought the question substantially settled.

He was glad to hear his worthy friend from Richmond say that if they stopped at present apportionment, he should still consider them as having done something. He should deplore an adjournment of the Convention without doing any thing; and would be willing to take up this subject, did he not fear the evils of a prolonged and useless debate. He would appeal to the venerable gentleman from Richmond himself, whether much time had not been lost already in fruitless efforts on this subject.

Mr. Powell said, that if the object of the very worthy gentleman from Richmond, in making his motion, was to give himself time for further consideration, he should cheerfully vote for it; but that object was disclaimed by the gentleman, and he felt free from any obligation on that score. If the gentleman had any object in view that would be gained, he would vote for the motion; but there was no other scheme for future apportionment proposed. Why then should this be laid upon the table? to get another and a better plan? If so, he would gladly assent to the motion. But if it were laid on the table now, it would be called up to-morrow, and all the effect would be a day's delay. Or, did the gentleman wish it to lie on the table till the Special Committee should be appointed to draught the Constitution, and then consider it afterwards? If so, the sooner the Committee was appointed, the better. But believing the only effect would be delay, he felt strongly inclined to vote against the motion. He was willing to remain upon the ground twelve months longer, if he saw the least rational hope of forming a Constitution which would be acceptable to the people; but believing that any Constitution based upon the principle of the gentleman from Albemarle, would be rejected by the people, he was himself determined to vote against any which should have this principle within it.

Mr. Leigh said, he should prefer the plan of the gentleman from Albemarle, taken alone, to the same with any plan appended to it for future apportionment, except two, both of which had been rejected. If he could add either the plan of the Federal number, or of the mixed basis (which was nearly the same thing,) he should prefer it: or if the Legislature was to be left at liberty to form new counties, and thus increase the representation of the West, as its population should grow, and be allowed to do the same to other counties on the same principle, according to any fair and just scheme, he was willing to support the measure. As to uniting the present amendment to the plan of the gentleman from Albemarle, he was utterly opposed to it: the results to every part of the Commonwealth would be highly injurious, and indeed some of the oddest and most extraordinary that could well be imagined. As he was resolved to vote against the resolution, he could not vote to lay it on the table. No future examination of the proposition could remove, but would, on the contrary, only confirm the objections he felt. The plan had not been offered on its own merits, but in connection with two other schemes which had been offered at the same time; and the gentleman from Frederick, (Mr. Cooke,) had said that he would vote with them on the question of the election of Governor, as part of the plan, while he had himself offered a proposition in relation to the Judiciary, and another had been proposed by the gentleman from Loudoun, (Mr. Henderson,) and these were the considerations which had been urged to induce them to vote for the proposition. Mr. L. said he had weighed these propositions, and found nothing in them which induced him to accept of the plan now offered. Taking voters of any kind would lead to the strangest results that could be conceived. The only defect in the representation had occurred in the Valley and in the Middle country; and yet this scheme took three from the Valley. Mr. L. said, he considered it as no part of his duty to take care of the interests of the Valley, and he doubted, exceedingly, if gentlemen from that part of the State would be willing to receive him as a co-adjutor; he knew they regarded him with infinite distrust, yet he would take the liberty to declare that he was unwilling to do injustice to that part of the Commonwealth, and being assured such would be the result, he could not but oppose the proposition. It was true, the scheme was not to go into effect till 1835—but in other words, this was tempting the West, with all the raw material of freeholders, that is, free white citizens and vacant lands, to manufacture freeholders, and thus manufacture power, until that period should arrive. He meant to make no charge of corruption, or to impute to the West any vice of which he was not himself conscious: but there was no man's virtue which he would trust under such circumstances; nor would he ask others to trust him in the like case.

Mr. L. concluded by saying, that (if it would not be construed into disrespect to the venerable gentleman from Richmond,) he would enquire of the Chair, whether a motion to postpone indefinitely, would not take precedence of the motion to lay on the table? But if such a motion should be held to imply the least possible want of respect to the feelings of the worthy gentleman from Richmond, he should not make it.

The Chair replied, that according to the rules of the House of Representatives, there was a precedence among privileged questions, but not by the House of Delegates; and therefore, the motion for indefinite postponement, would not be entitled to precedence.

Mr. Marshall consented to withdraw his motion. And thereupon,

Mr. Leigh moved that the subject be indefinitely postponed.

Mr. Naylor opposed the motion. So long as a ray of hope remained, he should vote against it. Should the Convention form a Constitution, without any principle of future apportionment, it would prove an abortion.

The Chair said, that the indefinite postponement could only affect the proposition before the House, and would leave the subject still open.

Mr. Neale now withdrew his amendment.

After two motions had been made and successively withdrawn, for considering other subjects,

Mr. Cooke moved the following:

Resolved, That it is expedient that some rule or principle should be adopted for the future apportionment of representation among the people and throughout the Commonwealth of Virginia."

Mr. C. said, it was worse than idle to consume time on propositions for future apportionment, if a majority of the House were resolved that no such plan should go into the Constitution. In order to test the sense of the House on that question, he had made his motion in its present form.

Mr. Scott moved to amend it by adding "provided such rule shall meet the approbation of a large majority of this Committee."

The debate on this question was desultory in its character, and conducted by Messrs. Scott, Claytor, Nicholas, Randolph, Cooke and Stanard; and resulted in the following vote, and decided by—Ayes 51, Noes 45.

After an ineffectual attempt to take up the Judiciary report,

The House then adjourned.

TUESDAY, DECEMBER 29, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Douglas, of the Presbyterian Church.

Mr. Henderson said, that he had some days since given notice, that he should move a re-consideration of the vote, which placed the election of Governor in the hands of the people; but it would be recollected, that such a motion formed part of a plan, in which several measures were to be united—one of which consisted of the amendment of the gentleman from Richmond county, (Mr. Neale.) That amendment having been withdrawn, and the plan, in consequence, not acted upon, he now declined making the motion he had formerly intended.

Mr. Cooke then moved, that the Convention take up the report of the Committee on the Judiciary.

The motion having been agreed to, the first resolution of that Committee was then read as follows:

Resolved, That the Judicial power shall be vested in a Court of Appeals, in such Inferior Courts as the Legislature shall from time to time ordain and establish, and in the County Courts. The jurisdiction of these tribunals shall be regulated by law. The Judges of the Court of Appeals, and of the Inferior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall at the same time hold no other office, appointment or public trust; and the acceptance thereof by either of them, shall vacate his Judicial office. No modification or abolition of any Court, shall be construed to deprive any Judge thereof of his office; but such Judge shall perform any Judicial duties which the Legislature shall assign him."

Mr. Cabell moved to amend the resolution, by adding at the end of it the following words: "but if no Judicial duties shall be assigned to him by the Legislature, he shall receive no salary in virtue of said office."

Mr. Marshall said, that if the amendment had declared, that if there were no Judicial duty, which the Legislature *could* assign to the Judge, none which he *could* perform, that then he should receive no salary, he should feel no objection to its adoption; but, it was impossible not to see, that the amendment in its present form, revived the old question, as to the dependence of the continuance of a Judge's office, on the will of the Legislature. Whenever it should be the will of the Legislature to take away the employment of a Judge, by abolishing the court in which he served, and to take away his support, by assigning him no other duties, it was perfectly in their power

to do so. If the amendment had required no more, than that a Judge should receive no salary, when there were no Judicial duties to be done, which might be assigned to him, he should be content; but, if it rested on the will of the Legislature, to assign him any duties or not, undoubtedly, the tenure of such a Judge's office, was a tenure during pleasure merely.

Mr. Cabell said, he should not be so presumptuous, as to oppose himself in argument to the venerable gentleman from Richmond; nor was it necessary for him to do so. He had been induced to offer the amendment, by a sacred regard to his duty to his constituents; and he was perfectly confident, that if the Constitution was eventually to contain such a feature in it as the first resolution contained, and which it was the object of his amendment to strike out, it would not be voted for by thirty men in all the District from which he came. They would regard such a clause as evincing an attempt to establish a band of civil pensioners; and he was well assured they never would tolerate it. So long as an officer performed his duties, they were very willing he should receive his salary; but when, for any cause, physical or moral, that officer should be unable to perform the duty he had covenanted to do, they would not consent that he should receive the emoluments of office. Mr. C. insisted, that his amendment in no degree attacked the independence of the Judiciary Department. He should certainly be the last man in that Assembly, who would offer to do any thing that would have such a tendency. But, he thought if the Judiciary Department was secure, they who presided in it must be sufficiently so. When the public interest should require the abolition of a court, the Legislative body, coming from all parts of the Commonwealth, and being acquainted with the interests and feelings of the whole State, would soon discover the necessity of the case, and would abolish it accordingly. And when a Judge was discharged from the necessity of performing any work, he could not conceive that he was entitled to receive his salary. The idea that his office remained after his court was abolished, was so very metaphysical, that he was really unable to comprehend it. He had always presumed that the office of a Judge was incidental to the court of which he was a Judge, and when the court was abolished, it fell of course: that the office of a Judge ceased as soon as the things he was to judge of, were withdrawn. But, he should not attempt to pursue the argument, or amplify the ideas he had suggested.

Mr. Claytor asked, that the question should be taken by ayes and noes, and they were ordered by the House.

Mr. Madison said he availed himself of the remark of the gentleman from Richmond, to enquire whether it would not be proper to vary the amendment, so as to say, that if there were no duties properly assignable to the Judge by the Legislature, that then he should receive no salary. He believed this would meet the distinction which the gentleman had suggested; and if no body else moved it as an amendment, he would himself do so.

Mr. M. accordingly moved as an amendment to the amendment of Mr. Cabell, to strike out the words "if no duty shall be assigned him," and insert in lieu thereof, "if there shall be no duties properly assignable to him."

Mr. Johnson rose to enquire, how, should the amendment be adopted, it was to be determined whether there were any duties thus "properly assignable," or not? If the Legislature should ever be induced to abolish a court with a view to get rid of a Judge, and then it was to be referred to the same body to say, whether there were any duties properly assignable to him, on the performance of which his salary was to be continued, it was not possible there could be any other than one decision of the question. The Legislature, which had taken the first step in abolishing his court, would assuredly take the second, and declare there were no duties which it could with propriety assign to him. In such a case, there was no umpire between the parties, and thus the amendment would leave the case just where it was.

Mr. Doddridge said, that the gentleman from Augusta looked only to the rare and very extreme case, where a court should be abolished for the sake of disposing of an obnoxious Judge; but he seemed to forget that it might often happen, that that body might abolish a court *bona fide*, because it was useless, and could be dispensed with. He hoped the amendment of the gentleman from Orange would prevail.

Mr. Nicholas opposed the amendment of Mr. Cabell, as putting the Judge at the mercy of the Legislature. It could rarely happen, that the modification of a court would render the services of the existing Judges unnecessary; and if there even were one or two surplus Judges, to maintain these would be far better than putting the whole corps into the power of the Legislature.

Mr. Marshall said, he wished to submit to the gentleman from Orange, (Mr. Madison,) for whose opinion he need not say that he entertained a very profound respect, some reasons which he thought would satisfy him that it was morally impossible such a state of things could occur, in which there should be no Judicial duties, which could with propriety be assigned to a Judge thrown out of employment by a modification or abolition of one of the courts. Supposing such Judge to belong to the Court of

Appeals, or to the Inferior Courts between that Court and the County Courts, was it possible such a state of things could arise, in which there would be no duties properly assignable to either? 1st, Take the Court of Appeals. When could the case occur, when there should be no Court of Appeals? Would the original courts ever be made final as well as original? Would any man leave that discretionary with any body whatever? Would any gentleman say, there should be no Court of Appeals? That there should be as many expositions of law as there were Inferior Courts? There were upwards of one hundred Inferior Courts in Virginia. Would any man say, there ought to be an hundred and odd constructions of law in the Commonwealth? He was satisfied there was none who would say so. There must be then a Court of Appeals. And if so, could the time ever come, when there would be no Judicial business for the Court of Appeals? Modify that court as they pleased, there must be appellate duties to perform.

Then as to the Inferior Courts: He prayed gentlemen to consider what he had attempted over and over to impress upon their attention, that the question would no longer occur as to a man who had been commissioned as the Judge of a particular court. Should the resolution be agreed to as it now stood, Judges could be commissioned as Judges of the Inferior Courts of the Commonwealth, and their commission would extend to every court between the Court of Appeals and the County Courts—courts which exercised among them all the criminal jurisdiction of the country, and all of the civil too, which did not come before the County Courts. Could this business ever cease? Could the time ever arrive, when there would be no such duty to perform? No gentleman could look at the dockets of these courts, and possibly think that there ever could occur such a state of things as was provided for by the last amendment. That amendment stated an impossible case—a case where there should be no controversies between man and man, and no crimes committed against society. It stated a case that could not happen—and would the Convention encounter the real hazard of putting almost every Judge in the Commonwealth in the power of the Legislature, for the sake of providing for an impossible case? He hoped not. But were it even possible that such a case could arise, would it not be more wise to pay a Judge's salary for a short time, than to leave it at the mere pleasure of the Legislature, to say whether a Judge should retain his office or not? But the case was impossible; and therefore, he saw no reason for adopting either of the amendments.

Mr. Tazewell said, that if it was indeed true that the amendment provided for a case which never could occur, that would be a strong objection to its adoption, but he confessed he was unable to see that length—on the contrary, said Mr. T., I think that the case will frequently occur, and that it must be provided for. At the outset, I must be permitted to repeat a suggestion I formerly threw out, and which has been overlooked by the gentleman from Richmond, (Mr. Marshall.) The gentleman speaks of the Legislature's abolishing the Court of Appeals—but that cannot be done. It is a Constitutional Court—the Supreme Court of Appeals stands to Virginia in the same relation as the Supreme Court of the United States stands to the Union—Congress might as well attempt to abolish the latter, as a Virginia House of Assembly to abolish the former. You have said by your Constitution, that there shall be a Court of Appeals. You can neither abolish that court nor the County Court.

The Inferior Courts are subjected to Legislative authority, and it is in them, if at all, that such a measure will be attempted as has been supposed. The words in the report have been literally copied from those in the Constitution of the United States; the words of which have received a settled interpretation. Suppose the case to have occurred, that the Legislature has improvidently adopted a system for the Inferior Courts which works badly in practice—suppose they have agreed on a system that assigns to a population of 5 or 600,000 white persons a corps of fifty or sixty Judges—they become sensible of their error, and find that reformation is absolutely necessary—they accordingly reform the courts, and instead of sixty Judges they resolve to have but fifteen. What is to become of the remaining forty-five? The amendment comes in and provides for such a case. As the resolution now stands, these forty-five Judges must all continue to receive their salary during life. This, if I understand it, was the objection of the gentleman from Pittsylvania, (Mr. Cabell.) Would gentlemen introduce into this Commonwealth a band of civil pensioners? For what does a Judge receive his salary? For the performance of his Judicial duties. But when his court is abolished he is no longer a Judge. He cannot be. There is no court in which he can pronounce judgment. Do gentlemen mean to continue to him his salary for nothing? This is an objection which strikes the mind so strongly, that in order to meet it beforehand, the resolution is made to say, that there are potential duties which the Judge may at some future time be called upon to perform, but he must receive his pay in the mean while—we are to pay him now—and assign him duties hereafter. The amendment of the gentleman from Pittsylvania holds a different language—it says, that when he performs these duties, he shall receive his pay, but not before.

But it is suggested, that this goes to sap the independence of the Judiciary, because it is possible, that the Legislature may modify or abolish a court, merely for the purpose of getting rid of a Judge, and I must vote against this amendment, lest the Legislature should be so mischievously inclined, as to be guilty of this unworthy act. But, I ask, is there not a Scylla on one side, quite as dangerous as this Charybdis on the other? Is there not another consideration which may operate on the Legislature, as well as dislike to a Judge? May there not be such a thing as partiality to a Judge? or to some other individual wholly unfit to be a Judge, but whom the Legislature wants to pension? and may they not with a view to effect this object, first appoint him a Judge, and then abolish his court? In that case he will receive his salary for life, and have no duties to perform. The case, I grant, is not a very probable one, but it is quite as probable as the other. If we are to reason on the supposition of frauds by the Legislature, we must take into our view, frauds of all sorts—frauds in one direction as well as in another. A Legislature who would abolish a court to get rid of a Judge, would not be too good to abolish a court to pension a Judge.

I cannot concur with the venerable gentleman from Richmond, (Mr. Marshall,) in the other branch of his argument. He supposes that all the Judges, except those of the Court of Appeals will be commissioned as "Judges of the Inferior Courts." I do not think so. The Constitution declares, that a portion of the Judicial power of the State shall reside in such Inferior Courts as the Legislature shall from time to time establish. When these courts shall have been thus established, and the Executive proceeds to fill the office of Judge, the commission of the Judge will agree with the terms of the statute creating his court. The statute will give a name to the court, and in that name the commission of the Judge will run; if not, we shall have a curious state of things. The Judges in the Court of Appeals, and in the County Courts, being perpetual, as Judges of Constitutional Courts, the remaining Judges, will be Judges of the Inferior Courts of Common Law; and all Judges in Chancery, will also be Judges of Inferior Courts, and both being commissioned accordingly, it will come to pass that all our Chancellors may sit as Judges of common law, and all our common law Judges may sit as Chancellors. But if the terms of the resolution mean, that the Legislature may establish such courts, and with such jurisdiction as they see fit, the natural course of things will be, that as soon as the law has passed creating any court, the Judge will be commissioned according to the title of his court. He will be a Judge of the General Court, or a Judge of the District Court, or a Judge of the Superior Court of Law, or a Judge of the Superior Court of Chancery. If the Legislature give a name to the Inferior Court, he will of course be commissioned according to the specific description of that court.

Then the question arises, whether the amendment of the gentleman from Orange, (Mr. Madison,) ought to be adopted or not. I grant, that if when the Legislature perceiving that the good of the community so requires, and the Constitution shall at the same time declare, that the Judge shall receive his salary, till some other Judicial office shall be provided for him. If this is the mind of the Convention, then all the propositions for amendment should be rejected. But if this Convention subscribe to the principle of—no duty, no salary—then the amendment of the gentleman from Orange ought to be adopted. When you give the ex-Judge his new duties, then give him his salary; but, if you assign him no duties, let him receive no compensation, on the broad and general republican ground of—no labour, no pay.

Mr. Stanard next addressed the Convention:

The objects proposed are these: It is contended on the one side, by those who are in favour of the resolution as reported by the Judicial Committee, that it is necessary to except the Judges from the caprices of the Legislature, and exempt them from a dependence on the mere will and pleasure of a majority of that body. In maintaining this proposition, these gentlemen do not ground themselves merely on an argument *a priori*, but on matter of fact and experience—experience of a recent date, and facts which have occurred in several of the States. But for some such provision, it would be in the power of a bare majority of the Legislature, under the excitement of strong political feelings, or of any other violent excitement, at any time to undermine the independence of the Judiciary. They have but to repeal the law, creating a court, and then to re-enact it, and all the former Judges of that court are, of course, dismissed. I enquire, to know of the gentleman from Norfolk, (Mr. Tazewell,) whether, without some such provision as is now proposed, this will not be in the power of the Legislature? whether they may not thus create places for the favourites of the day; the ready tools of a dominant faction? Such a power, as must be most manifest, is utterly destructive of the independence of the Judiciary. But does the evil stop there? Does not such a state of things go to make the Judges the subservient tools of the most pernicious purposes? And are such purposes never entertained by the Legislature? Have we not seen a sister State convulsed to its very foundations, by questions between power and property? between the vice and the virtue of the State? And are we prepared to leave our Constitution and our Common

wealth exposed to such tempests of faction? Surely it is desirable to avert them if possible. The question is, can this be done, while we avoid other mischiefs of equal if not greater magnitude? Gentlemen may make different estimates of mischief. According to my estimation, no very serious mischief can arise to the State, even if it should happen, that we have for a time a few Judges upon salary to whom no duties have been assigned. Is such an evil worthy even to be named, in comparison with the evil of a dependent Judiciary? But the gentleman tells us, that there is an evil on the other side—it is, that an unprincipled Legislature may be willing to pension their active agents, by giving them an office from which they cannot be turned out by their successors; or if turned out, the salary of which shall remain sure to them. I need not, I will not, enquire as to the extent of such a mischief as this. If fairly weighed, it must be admitted that this is a case in the very utmost extreme of improbability—it is such a case as never has occurred, and never will or can occur, until the Constitution shall have become of little value. But suppose it does occur. Suppose that a faction hitherto dominant, but about to part with power, shall exercise the last moment of its authority, in providing for its agents, by encumbering the State with an army of Judges, is there no guard provided against such a case? Must these useless Judges of necessity retain their office and salary? Does not the eighth resolution give the Legislature full power to remove them? and can there be a better cause of removal, than that they had been put into office, not to serve the public, but to live upon it as a band of civil pensioners? Here then is a complete remedy against the evils on one side, while against those on the other, we are to have no remedy at all. I shall, therefore, offer the following as an amendment, when the other amendment should have been disposed of, viz:

To strike out from the word “but,” in Mr. Cabell’s amendment, and add these words: “When a court shall be abolished and no new court substituted in its place, and the duties which had been assigned the abolished court shall be transferred to other courts, without providing other Judges than those belonging to such other courts, the offices of the Judges of such abolished courts, may be abolished with the courts of which they were Judges. And when a court shall be changed or modified, and new or different duties assigned to the Judges of such courts, the commissions of such Judges may, in the discretion of the Legislature, be changed to adapt it to the change or modification of the courts.”

Mr. S. did not consider it as indispensably necessary, but was willing it should be inserted by way of explanation, to remove all difficulty as to the latter clause of the first resolution.

This, said Mr. S., will leave it in the power of the Legislature, to abolish courts when they become useless, while at the same time, it checks the irregular exercise of their power against Judges, who, perhaps, by the very virtues of their station, may have become objects of party hatred. Without this check, or something equivalent to it, what is the safeguard for the Constitution?

Mr. Scott thought the amendment would fail of its object—as a Legislature determined in its purpose might easily evade it by transferring the duty of the obnoxious Judge to another existing court; and afterwards at a subsequent session, organizing a new court and re-transferring the duties to a new Judge.

The question being now put on Mr. Madison’s amendment, it was not agreed to.

The question then recurring on the amendment of Mr. Cabell,

Mr. Stanard offered the amendment he had read. [See above.]

This amendment gave rise to a long and animated debate, in which the merits of the original amendment were occasionally mixed in the discussion.

Mr. Tazewell opposed the amendment as being against other parts of Constitution, which provided for the appointment of Judges. To make a man a Judge of a particular court by changing the form of his commission, would be inconsistent with the mode the Constitution prescribed for his becoming a Judge of that court. He could not conceive how a Judge as such could survive the court.

Mr. Stanard insisted that names did not alter things—and if the same duty, substantially, was performed, it mattered not what was the name of the court—the same Judge might continue to perform it. The Legislature might require a Chancellor to perform duties of Oyer and Terminer—his being called Chancellor would not prevent his performing them, and rightfully. Else, how could a Judge of the General Court perform duties in the District Court?

Mr. Taylor of Chesterfield did not think Mr. Stanard’s amendment would answer its intended purpose. He was opposed to the amendment of Mr. Cabell, as it went in his judgment to impair the independence of the Judiciary. Yet the resolution in its present form would not enable the Legislature to remove a Judge when his court was really unnecessary. While he opposed both amendments, he should, if they were rejected, offer another, which he read.

Mr. Giles went at length into the general subject, with a view to show that it was impossible for a Judge to retain his office as Judge, after the court in which he had

performed Judicial duties had been abolished. He repeated the profession of his attachment to the independence of the Judiciary—but thought it ought to be kept responsible. To continue a Judge's salary after his court, and with it his office, was gone, was favoritism and introducing a privileged order.

Mr. Marshall declined entering into the argument—but briefly assigned his reason for voting against Mr. Stanard's amendment.

The question was then taken on Mr. Stanard's amendment, and decided in the negative by ayes and noes as follows:

Ayes—Messrs. Stanard and Upshur—2.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly and Perrin—93.

Mr. Stuart now moved the following amendment:

"Where a re-organization of the Judiciary shall be made, the Judges in office shall in the first place be assigned to perform the Judicial duties which may arise under such re-organization; and if there should be more Judges in office than may be required under the re-organization, the Legislature by joint vote shall designate which of such Judges shall be considered supernumeraries; who shall upon such designation cease to receive their salaries. And no new Judges shall be appointed under any re-organization so long as there are a sufficient number of Judges in office to perform the Judicial duties under such re-organization."

The question being put it was negatived.

The question then recurring on the amendment of Mr. Cabell, it was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Giles, Dromgoole, Alexander, Goode, Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Madison, Osborne, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie and Bayly—59.

Noes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Marshall, Tyler, Nicholas, Baldwin, Johnson, Miller, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Cooke, Powell, Griggs, Pendleton, Taylor of Caroline, Morris, Garnett, Summers, Barbour of Culpeper, Scott, Green, Townes, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—36.

So the Convention adopted the amendment of Mr. Cabell, declaring that when a Judge, by the abolition or modification of a Court, should have been thrown out of employment, he should receive no salary until new duties were assigned him.

The question was then put on agreeing to the first resolution of the Judiciary Committee as amended, and was agreed to.

The second resolution was then read as follows:

"Resolved, That the present Judges of the Court of Appeals, Judges of the General Court and Chancellors, remain in office until the expiration of the session of the first Legislature elected under the new Constitution, and no longer. But the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as from their age, infirmities, and past services, shall be deemed reasonable."

Mr. Claiborne moved to strike out the word "Resolved," (in effect to destroy the resolution.)

He contended that this was not reform, but revolution—remonstrated with warmth against the injustice of removing men against whom no charge was pretended, merely because there were a few imbecile members of the body to which they belonged. Such a measure was without a parallel in the history of civilized society. He admitted the existence of complaints, but thought that in most cases they were rather made than proved. Virginia might vie with any of her sister States in the respectability of her bench, and he trusted there was still some veneration felt for it among her own citizens. He denied there existed such corruption or such fruitlessness as needed that the axe should thus be laid to the root of the tree. And if one part of the State laboured under the evil of an incompetent or unfaithful Judge, this ought not

to deprive other parts of the State of Judges who had earned and enjoyed the favour of the people.

Mr. C. objected to the last clause of the resolution as being at war with the first.

Mr. Cooke took the same ground. He was aware how strongly the current was setting against the Judiciary in Virginia—and that it required some share of moral courage to stand up and resist it. He adverted to the compact made by the Commonwealth with twenty-four of her distinguished, intelligent and learned citizens; in consequence of which, they abandoned a lucrative practice for a place of high honor, and permanent, though very moderate emolument. He owned that the occurrence of the Convention intervening might put an end to the contract: they had the physical power, but not the moral right to do so. The re-organization of the intermediate Courts might be effected without this ostracism of the Judges. If any were slothful or incompetent, there was a provision for their removal. But he thought the representations on that subject greatly overcharged; and bore honourable testimony to the laborious and most faithful discharge of duty by all the Judges under whom he had practised for twenty-one years: he knew not a single exception.

Mr. Morgan now moved to amend the resolution, by striking out the last clause, viz: "But the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities and past services, shall be deemed reasonable."

On this question Mr. George demanded the ayes and noes, and they were ordered by the House.

Mr. Giles thinking the measure proposed by the resolution as very harsh, and not to be resorted to unless the most imperious necessity should demand it, said he should vote for the latter clause as presenting some mitigation. But he hoped the whole might be dispensed with.

Mr. Claytor was opposed to the clause—not seeing how the sum could be needed, or given, as a compensation for services which had already been compensated by salary. As to the removal of the Judges, they must fall with the abolition of the courts to which they belonged; and none of which were retained except the Court of Appeals.

Mr. Leigh said, that if such were the fact, and by the adoption of the Constitution, all the courts, with the Judges were to fall, *ipso facto*, the case ought certainly to be provided for. The Commonwealth would be deprived at once of the administration of criminal law, and a pardon before had to be provided for all crimes, until the new courts should have been organized. He hoped the gentleman from Augusta would offer the amendment he had some days since provided on this subject.

Mr. Powell, differing in his views from his colleague, expressed the motives which would induce him to vote for the resolution, and against the amendment. He denied there was either a legal or moral obligation on the Commonwealth to retain the Judges in office. Not a legal obligation, because the liability to be removed by a Convention was known when they accepted their offices, and was by some expected fully as an event near at hand; not a moral, because though removed for a moment, they would all be immediately re-instated by the Legislature with the exception of a few who were incompetent to their duty, or neglectful of it. Such as were disabled by age and infirmity, would have their feelings saved by such an arrangement, and it was due to them thus to soothe their feelings. He insisted on the justice and propriety of retaining the last clause; for, what was to become of those disabled Judges who should not be re-appointed to office?

Mr. Brodnax, now addressed the House nearly as follows:

That he could not but be sensible that the period for debate had passed by in that body long since, and that impatience of all discussion existed to a degree which but few of its members could now subdue. That this was particularly true of those subjects which at different times, and under various aspects had already engaged the elaborate consideration of the Convention. But, Mr. President, (said he,) it is surprising that this important project of annihilating by one touch of the wand every Judge in Virginia—this act of confiscation—this constitutional attainder—should have heretofore been permitted to work its way through the various Committees, and the House, with so little comparative observation or attention. I was not a member of the Judicial Committee, and am ignorant of the grounds on which it was originally reported, and all of us recollect that it received the approbation of the Committee of the Whole almost *sub silentio*. The reasons for its adoption were not discussed. That plausible, perhaps conclusive reasons exist, we are bound to presume. The importance of the principle involved, seems to require that they should be assigned. For one, I am anxious to be able to bear to my constituents, some reason for the adoption of a plan in reference to our Judges, which at present strikes me as amounting not to *reform* but to *revolution*. The only argument with which we are to-day favoured, that of the gentleman from Frederick, (Mr. Powell,) has not satisfied me of the propriety of this measure; and as it is my misfortune to differ not only from my highly valued col-

leagues on this question, but from many distinguished gentlemen here, for whose opinions I entertain the most profound respect, and with whom it is usually my pride and pleasure to act, I hope I may be indulged in suggesting some of the objections which to me have appeared insuperable. While I can promise nothing better, I will at least engage to detain the House but for a few minutes.

Sir, this scheme of shoving in one group all your Judges "by the board," without crime on their part—without even the imputation of offence, appears to me as not only *unjust* to them as individuals, but *impolitic* in us as statesmen, from its inevitable tendency to invade the independence of the Judiciary, and present a dangerous precedent to future times. A thought or two, Sir, on each.

Its *injustice* to the present incumbents results from its palpable violation of an express contract between themselves and the Government. What was the original undertaking between the contracting parties? Is it not strange that there should be a difference of opinion among us, when the commission itself indicates the terms? Terms, too, literally and substantially coincident with the received theories of the ablest political writers in Europe and America? And yet the gentleman from Frederick, (Mr. Powell) has just informed us that no compact, express or implied, existed, when the Judges accepted their commissions, inconsistent with their dismissal, on the adoption of a new, or amended Constitution. And the gentleman from Amelia, (Mr. Giles,) has more than once, in reference to another branch of this subject, expressed the opinion, that "the Judicial tenure was not for *life*, but during the continuance of the office *itself*." Sir, I cannot but distrust the correctness of any opinion I may have formed, when I see among its opposers, gentlemen deservedly standing so highly as these. But, I had always supposed, and such surely is the *written evidence* itself, the *record* of the terms, which it is not competent for either party to deny, that the contract is, indeed, neither one nor the other; but "during good behaviour—*dum se bene gesserit*." Not during the continued existence of the office, surely; for a breach of "good behaviour" would properly operate the removal of the Judge from his office, when it might be very inexpedient to abolish the office itself. The real undertaking is, that the Judge on his part shall faithfully render all the services he can in the discharge of his official duties, and the State engages that he shall continue to occupy the office, so long as he continues to "behave well." And by another provision of the Constitution, on the faith of which he contracts the engagement, "his salary shall not be diminished during such continuance in office." So long then as he is *able* and *willing* to discharge the Judicial functions to which he was appointed—or in the technical language which time has consecrated, and which imports precisely the same, so long as he *behaves well*, the State on its part, has neither the right to dismiss him from office, nor abate any portion of his salary. Now, all the world would cry out on the bad faith—the gross injustice of diminishing his salary *one-half*; but only take away *all*, by dismissing him from the station which you engaged he should occupy during his good behaviour, and then there is no injustice in the proceeding. This, Sir, cannot be a legitimate induction. The State constitutes one of the contracting parties—the Judge the other. We have the physical power it is true, but is it morally proper that one party should rescind the contract without the consent of the other? As between individuals, there is not a code of laws on earth which would not reprobate it.

But, the gentleman from Frederick, (Mr. Powell) assures us, that the present Judicial incumbents will, with few exceptions, no doubt, be re-elected by the Legislature. So far as this consideration—this uncertain expectation—is to afford a motive of action to us, I beg that it may be examined for a moment. That it has, and will greatly influence the course of many gentlemen in this body, we are not left to doubt. We make all the Judges "walk the plank," offending or unoffending, under the expectation, that when we have plunged them all in the ocean, the Legislature will send out safety boats, and pick them up! Some, they no doubt will pick up—some, they certainly will not. But, I pray you, Sir, as far as *we* are concerned, is not the *principle* we are called on to adopt, in expunging all of them from the roll of our officers, precisely the same as if we *knew* in anticipation, that not one would be re-instated? What more could *we* do to destroy them? It would, indeed, be a most persecuting and vindictive disfranchisement, which would go the length of destroying their capacity for all future office. In this respect, we are to leave them exactly in the same condition with every other person. If re-appointed by the Legislature, they will hold under their new commissions only. They will have no higher *constitutional* or *legal* claim to selection, than every other citizen of Virginia. There will be no *obligation* on the electing body to provide for them. There are other lawyers in the State, equal in legal abilities to any Judges, and we have no doubt, many young lawyers among us, who, in their own judgment at least, are very well qualified to fill the seats of the present Judges. And if the Legislature shall re-elect most of the present incumbents, it will mainly be ascribable to that moral sympathy, which ever induces the generous to elevate those, whom they regard as having been unjustly degraded. So that, in

truth, we look to the Legislative re-appointment of those Judges whom we are about to cashier, with a confidence, inspired by the belief, that they will see and feel that we have done them injury, and will repair it. We do *wrong*, that the Legislature may do *right*. Sir, this cannot be morally or politically correct.

Mr. President—I said that this appeared to me not a *reforming*, but a *revolutionary* movement. It is *worse* than revolution. Where has the most thorough and radical revolution ever occurred among a people pretending to civilization, in which the contracts and disabilities of the old Government were not recognized and respected by the new? Even in absolute monarchies, where the Government itself resides almost exclusively in the person of the King, and the revolution has resulted from the ejection from the throne of an acknowledged pretender, are the national debts and engagements of the previous reign cancelled? Certainly not, Sir. The principles of international law, as well as of moral propriety, prohibit it. The United States at this very time, if I am not greatly mistaken, have claims of that character, in negociation with more than one foreign Court. Who has forgotten, that after our revolution, and when every tie which bound us to the mother country had been severed, (except the ties of universal justice and benevolence, which should alike obtain in every region and in every age,) that the inspired eloquence of the immortal Henry himself, was *vainly* exercised, in this very city, to persuade the proper tribunal to refuse the payment of the British debt? And can that which would be morally wrong between nations, or between individuals, be right between a Government and one of its own citizens? The only difference must be, that in regard to nations, the parties are co-ordinate in dignity and power. A treaty or a war secures the right or affords the remedy. In the latter case, one of the parties is an individual, dependent on the other for protection—a worm under our heel, whom we have power to grind to dust, if such be our pleasure.

Sir, many of these Judges have been long in office, and it may be thought that the duration of their tenure has already transcended their own most sanguine expectations when they accepted commission; that at least there will be *less* of injustice in discharging these ancient servants without even their “six months pay in advance,” as they have so long drawn salaries from the public treasury. It may, Sir, for aught I know, have been less in mercy than in vengeance, that the Almighty Providence has thus protracted their existence, in a cold-hearted, changeable, and ungrateful world. Of this I say nothing. But suppose, Sir, for illustration, that your existing establishment included Judges recently commissioned, appointed within the last year or two. Whether the *fact* accords with the *supposition*, I leave with the House—and suppose that these Judges in accepting office, had to abandon a lucrative profession. If they had not, they were not fit for Judges. A profession, on which themselves and their families were dependent, more lucrative greatly than the offices of which they are now incumbents, but exchanged for those offices in consideration of the superior permanency and certainty of the annual avails. You have seduced these gentlemen from their practice, and kept them from it exactly long enough for them to have lost it all. Exactly long enough for all hopes of usefulness—of distinction—nay, Sir, of support, to be barred against them in that direction forever. Every observer must have remarked the extreme difficulty of any professional gentleman, once in possession of an extensive practice, but who has temporarily abandoned it, ever regaining it. Why the fact should exist, I shall not pretend to account for, but we have all seen it, and know that he does not set out on his new career even with equal chances with his new and inexperienced competitors. Sir, will this effect of the proposed resolution be *just*? Is it *morally* defensible? It has long been said, that republics are fickle and ungrateful; let it not hereafter be added, that they are unjust also.

Sir, the gentleman from Frederick, (Mr. Powell,) predicts to us that those Judges only will fail of re-election by the Legislature who *ought* to be turned out, and it has on repeated occasions, not more frankly, but more distinctly been intimated to us that it was *necessary* to get rid of one or two particular disabled or obnoxious Judges, to whom a reference sufficiently intelligible has been made by some *general* provision, not *personal* to these individuals. We are so given to delicacy, that we must decapitate all—sacrifice the innocent and worthy together with the offending one, to keep him in countenance—as if to displace all, and then re-appoint all but *one*, would not as effectually wound his feelings, as if he had been disbanded alone in the first instance. But, Sir, is it not cruel and unjust to punish the aggregate corps for the imbecility or offence of one? Are principles to be sacrificed to remedy partial and short-lived evils? The reason is one which cannot be avowed publicly, and therefore, should not be acted on privately.

The object avowed by some of the friends of this resolution elsewhere, at least, is to sink all the present Judges, that we may have “a clear sea”—to enable the new Government to get under way without embarrassment—the Legislature to be unfettered in organizing its Judiciary; while others advance a step further, and hail this as a happy opportunity of abating what they regard as a nuisance, and selecting an abler

bench. But, Sir, what is the difficulty which is to embarrass the Legislature, by the retention of the present Judges, in any new organization of the Courts, which in these days of upturning reform may be attempted? I defy them to prescribe any new plan which will not require at least *as many* Judges, as those now in commission. Every projet which we have heard spoken of, will require *more*. Let them give to your intermediate courts both equitable and legal jurisdiction—and assign two Judges to hold conjointly these courts of assize. Examine, Sir, any other plan you have heard spoken of, (let it have been ever so wild,) and see if any diminution of the *number* of your Judges is to be the probable result. But suppose, Sir, that in the felicity of modern invention, some expedient should be discovered, by which justice, both at law and in chancery, could be administered, with all the pre-requisites of promptitude—contiguity to every man's door—faithful impartiality and luminous ability—that all this could be done without time for the Judges to reflect, much less to read, and compare authorities—without the possibility of any Judge ever becoming sick or ever growing old; but on the contrary, always being able to ride with the celerity of one of Porter's express-es—and that *all* this could be effected by *fewer* Judges than we have at present—so that we should have on our hands one or two supernumeraries. What then? In a short time they would themselves die, or be called on to fill the vacancy of some other who had died. For, Sir, contrary to what appears the general opinion, my own belief is, that Judges, like other men, do sometimes die. But suppose they never would die, what then would be the character of the objection? One, Sir, simply and exclusively of *expense*.

Mr. President,—I will not enquire whether you have ever looked into the subject of the relative *expense* of the different departments of our Government. Every member of this Convention is conversant with the subject, and need only be reminded of it. The cost of the whole of our Judiciary establishment—that department of Government which comes nearest home to the observation, the feelings, the interests of every community—that institution which protects our property, our persons, our reputations, and our lives—that part of Government which is alone visible and tangible to the humblest citizen—the operation of this immensely important system in our political machinery, costs comparatively nothing: a mere drop to the ocean—a fraction of a cent to every individual in the State—while our Legislature costs more than one hundred thousand dollars annually, in enacting statutes one winter, and repealing them the next. The body over which you preside, together with the Legislature now in session, involves an expense to the Commonwealth, of nearly \$2,000 *every day*. And yet we are exceedingly apprehensive of the *expense* of one or two supernumerary Judges for a very short time! And to obviate so dreadful a contingent evil, we are willing to overturn all the principles of justice and moral propriety. Surely economy and retrenchment have become the order of the day with a vengeance. And to minister to the sickly, fastidious taste of the times, we are to adopt constitutional attainders and confiscations.

But it was urged the other day, by the gentleman from Amelia, (Mr. Giles,) that without this general abolition, the once highly respected and respectable, but now aged and infirm Judge, whom he indicated might be called on to perform Judicial duties in some assigned station; and though unable to act, he must of necessity be retained on the list, while the duties allotted to him would remain undischarged. Sir, if this fear were well founded, and another more efficient Judge had to be appointed to his place, is it not obvious that it still resolves itself into a question of the expense to the State of a salary to a Judge? But the difficulty cannot occur even by possibility. If any supernumeraries are left out in a new organization, they scarcely will be of those least qualified for service—the old and infirm. Whether they are wanting or not at first, whenever called on to render official services, for which, from age or infirmity, they are disqualified, they can at once be removed from office under the provision of that resolution, which confers on the Legislature the power of amotion, by a vote of two-thirds, without even assigning the reason.

As to the particular section of this resolution, now moved to be stricken out, I regard the course of the gentleman from Frederick, (Mr. Powell,) as correct—that its discussion necessarily involves the whole subject—in itself, it is a matter of little moment. The permissive, *not compulsory* authority to the Legislature to pay to such Judges as might not be re-appointed, “such sum as, from their age, infirmities and past services, shall be deemed reasonable,” would be worse than useless. Who is to judge? The Legislature—and they only in cases of age and infirmity, as well as long service. But suppose your Judge, though long in service, labours under the misfortune of yet possessing a vigorous constitution and an unimpaired intellect, he is to be turned adrift with the implied prohibition that any relief shall be extended to him. But, if cases to abide this partial relief would be strictly applicable, is it not surprising that it should be advocated by the very gentleman who so powerfully reprobates what he calls a *pension* system? Sir, this scheme of Judicial pauperism would in practice be futile. The Judge who accepted it, would go forth to the world with a brand on

his forehead, and it would be rejected with indignation by every individual of feeling or honor.

Sir, our labours thus far on this subject, appear to me to have operated a most incongruous result. We have, by a large majority, refused to strike out the previous resolution, which provides, that no abolition or modification of an existing court, shall deprive the Judge of his office, &c.; and most correctly, as I think, have we decided. If we had not, then the Legislature, whenever for political or other considerations, they desired to get rid of an obnoxious Judge, would only have to abolish his court, and he would have fallen with it. This, too, by a bare majority of the Legislature, when we require two-thirds to displace him arbitrarily. And yet, Sir, after retaining that provision, the one now under consideration, and which in order immediately succeeds it, proposes to eject every Judge from his office, without the abolition of any court. The inevitable inference is, that what would be *wrong* hereafter, is *right* now. That as to *all* Judges *in general*, it would be incorrect to discard them arbitrarily, or under colour of abolishing their court; but, as to the present Virginia Judges *in particular*, it would be very right and very proper.

But, Mr. President, these objections to the resolution before us, are referrible principally to the rights and interests of the Judges themselves. Regarded in this aspect alone, the subject is of diminished relative importance. As was admirably remarked the other day by the gentleman from Richmond, (Judge Marshall,) it is not on account of a few individual Judges, that the principle of an *independent Judiciary* has been consecrated by the wisdom of ages—it is because the interest of the State is involved in it—the best policy of the whole community requires it.

Let us then examine the second objection which I have intimated. Has not this provision a direct tendency to invade the independence of the Judiciary—not only now, but to all future time?

Sir, after the animated, instructive, and transcendently able discussion on the general subject of the independence of our Judges, of either Legislative, Executive, or people, with which we were the other day favoured, I hope it will not be imagined that I now intend to offer a single remark in recommendation of the principle.

No, Sir—We have already on this part of the subject, had “Moses and the prophets” with us; and he who was then unconvinced of the value, the inviolability of this principle, “would not be persuaded, though one should arise from the dead.” Be mine then, the humbler task of pointing out one or two aspects, in which this independence will be impaired by this resolution.

In the very outset of the plan, every Judge in the State is to be dismissed, with permission, however, to be re-elected by the Legislature, *if he can*: Yes, Sir, *if he can*. That is, if he can command interest or influence enough with the Legislature, to effect a favourable consideration of his pretensions. And this ostracism, this ordeal, this walking among the burning plough-shares, is to occur some year or two hence. Sir, does not this, of necessity, at once throw all the Judges of the State on the electioneering arena, from this time until that event shall have passed? Will not every interest, every feeling, every prejudice, even of the human heart, invoke their most active exertions? Will it not occur to them, that the possible loss of office, now that they are too old to resume previous, or attempt new occupations, threatens them with ruin in a pecuniary point of view? And will they not feel still more keenly, that the reproach—the stigma of Legislative rejection, will be the pronouncement of a judgment of condemnation of their previous official conduct, from which there can be no appeal and no redress? Do you expect them to look on the approaching *scuffle* for office, (and *now* all offices are sought by crowds with morbid avidity,) with calm indifference? Will they not, even unconsciously to themselves, mingle in the strife? I entertain no idea that the particular gentlemen who now ornament the Virginia bench, are marked by any *proneness* to the servility and intrigues of electioneering, above other persons who might be in their situation. But I regard them merely as *men*, with like passions and feelings with others. And indeed, if we choose to offer to our Judges an extravagant compliment, at the moment in which we immolate them by the supposition of their superiority to such temptation, I would ask why erect any barrier at all around their independence? If we can, with good reason, calculate on the purity of public functionaries under similar exposure, why provide any checks or restraints? In fine, why ordain any written Constitution? But prudent Statesmen have ever found it necessary to insure the virtuous and beneficial discharge of public trusts, by walling them around, so as to exclude the temptation and the opportunity to err. This resolution breaks down this wall, and from *a priori* reasoning we are left to infer, that the fearful interval between this time and the manufacture of your new bench of Judges, will be a jubilee to the lawless—

“While sin holds carnival, and wit keeps lent.”

But, Sir, this is not all. You not only destroy the independence of the Judiciary, during this tumultuous interregnum, but you exhibit a precedent of dangerous ten-

dency, as long as our Government shall endure. You settle the principle, that whenever a Convention shall be called in Virginia, one effect is to be, that all the Judges are to be turned out. Indeed, it has been distinctly contended, that the present incumbents accepted their commissions under the implied understanding, that their Judicial functions were of course not to survive the then existing Constitution. Connect all this with the reiterated public assurances of several distinguished gentlemen on this floor, on a former occasion—gentlemen, who, no doubt to considerable extent, lead public opinion in their respective districts, and who are eminently qualified to act as prophets, inasmuch as they possess the power of bringing to pass the events which they predict, that if the Constitution, which we have now on the stocks, shall not be brought out in a shape congenial with their tastes, that your table, in one year, will groan with petitions for another Convention. Sir, if they had not told us, we know that this fever for Constitution-making, has become a mania in many parts of our country. When the first written Constitution was prepared in America, it was regarded by the rest of the world as little less than a miracle; but, we have gotten our hands in now. The people, with no practical oppressions, but as if hunting for theoretical grievances, have become unsettled and dissatisfied with the old Government, under the shadow of which they had so long lived happily, had they only known it. And now, Sir, proceed in this work of innovation as far as you please—still you must stop some where—and stop where you may, all beyond your barrier will complain—new Conventions will be attempted—and every pettifogger in the State, who cannot write a declaration in debt, without the aid of a form, will consider himself qualified, at a moment's warning, to draft you out a new Constitution, in neat form, and according to the latest fashion. And if most of us—many at least—dread that this unstable, unsettled state of things, will lead to other and repeated Conventions, is it improbable, that your new batch of Judges will also calculate on it, and constantly be looking ahead for breakers? That they may look to prospective Conventions—Conventions to be called by facilities to be granted by the *Legislature*—one effect of which will be the election of a new set of Judges by that same *Legislature*: a Convention to be called probably for the very purpose (if they do not walk so as to please their masters,) of operating a dismissal of the Judges. Would it, I ask, with this apprehension before them, be strange, that they should all this time try to keep well with, to propitiate this same *Legislature*? Suppose, in this state of things, a man of great influence in the *Legislature*, has a cause in court opposed to an obscure individual: Suppose the constitutionality of some favourite enactment to come in question—or suppose a prosecution by the *Legislature*, of some obnoxious or unpopular individual, whom they were anxious to destroy: this too, in times of high excitement, pending before a Judge, who knew that another Convention would probably soon occur, with its concomitant, the power of discharging him for his contumacy. Where, Sir, is the man so simple, or so innocent himself, as to confide in such a tribunal? Where is the Judge, imbued with the infirmities of our nature, who could raise his head erect above the storm, “while round his breast the rolling clouds are spread,” and shield the persecuted and innocent accused, when the whole community demanded the sacrifice? Without such Judges—Judges who could stem such a torrent, no Government is worth a rush—and such Judges you cannot have, without rendering them co-ordinate with, and not subservient to, the *Legislature*—not dependent on the breath of popular applause, more fickle than the winds. Such Judges we have seen, Sir—such I hope long to see. In this State, at least, we have all read a lesson on this subject, which on my mind has left an indelible impression—it has been lost, I apprehend, on none. We have seen an individual prosecuted, with all the weight of the United States Government—the entire influence of the State of Virginia—and last, not least, the spirit of a dominant party, excited by recent conflict, and flushed with recent victory—a party constituting a majority, which looked down all opposition—all exerted in combination to crush the accused. Not one found to sustain him—and when the individual, who would have presumed to say a word against his conviction, would have been politically denounced—perhaps torn to pieces by a mob! The Judge, whose firmness of purpose and integrity of motive, would not permit him to mould or fabricate *laws* to compass the conviction of the accused, (morally guilty, as he no doubt was,) he, Sir, we all recollect, was at the moment universally execrated, and his decisions ascribed to corrupt motives, and favouritism to the accused. What *now*, Sir, is the opinion of all the ablest jurists and best men in this Union, who, since the storm subsided, have examined the report of this celebrated trial? Is it not without an exception, that the Judge who then presided, adjudicated every legal question which came before him, with a felicitous accuracy, almost without parallel in Judicial history?

And how, Sir, could any Judge, however physically firm, and morally correct, (but dependent on the daily will of the Government) have ridden out such a storm in safety? Sir, I regard this trial, as one of the brightest spots in the history of the liberties of man. This is the kind of Judges we want. One who dares interpose the shield of the laws between an infuriated Government, and the humblest individual.

And such we never can have, in my poor judgment, should this resolution be engrafted on the new Constitution.

Mr. Coalter said, that, as to the last clause, he should not vote, because he was personally interested; but on striking out the resolution he should vote, and in the affirmative. As to the Judiciary generally, if the Legislature should continue the same Judicial system twenty years, they would get no better Judges; no, nor so good, though he was one of them. He should take no steps during the interregnum to operate on the Legislature. He was no electioneering Judge.

Mr. Johnson made an explanation on the subject of his amendment, providing against a suspension of the courts. He presumed a general clause would be added including other matter together with this; and the whole would go to the Select Committee.

As to the resolution itself, he had nothing to say: it was apparent to his mind, that the independence of the Judiciary itself, together with the whole corps of Judges, was to be offered up as a sacrifice to popular clamour; and so strong was the current against them, that he had not the vanity to suppose he could do any thing to prevent it. He would not waste the time of the Convention in vain and unacceptable debate.

Mr. Marshall made an explanation to Mr. Johnson, relative to an omission of his to reply to a quere of Mr. Johnson on the subject of his amendment, and gave his reasons for believing that there would be no suspension of Judicial duties on the adoption of the Constitution. As the second resolution provided the time when the Judges were to go out of office, he presumed the implication was, that they were to retain their office until that time. The Constitution would change nothing but what was *expressly* changed.

Mr. Claytor said, he had not been one of those who were so wild as to suppose that the Convention would deprive the country for one moment of the Judiciary establishment—nor was he so wild as to imagine that when Inferior Courts were established by the Constitution, the Judges of the old courts could claim the right of presiding in the new.

Mr. Stanard opposed the resolution as transcending the powers conferred in the Convention by the people. They were sent to amend the elementary law of the Commonwealth; that was their plain and proper function, and any rightful exercise of the power must be confined to that. The Convention, if it had power to disband the Judges, had power to declare them ineligible: if it might attain them in their office, it might in their estates. This would be exercising all the power of condemnation after an impeachment, but without having had their judgments enlightened by evidence. All would shrink from an attempt to send for persons and papers, in order to decide whether a Judge ought to be ostracised, and yet it was gravely proposed to go to judgment without any inquiry as to his conduct. A large majority were of opinion that the Judges had faithfully discharged their duty, yet they were called to pass sentence of eviction. He could not suffer an act to pass without recording his public renunciation of all participation in it—almost every State in the Union had amended its Constitution, with the exception of Rhode Island, and yet such a measure never was proposed or thought of, except in New York; and there, only because the duties of the Judicial office had been blended with the most delicate political trust. The effect of which was, that as the Judges were appointed under political views, so they incurred the most vehement resentment of a victorious and dominant party. Hence the Convention of 1821, in which the first measure was to divorce the Judicial office from this connexion with the politics of the State. Yet even here, reckless as the spirit of party was supposed to be, such a measure as cutting off the Judges by proscription, was never so much as proposed or thought of. They preferred the administration of justice to the gratification of personal vengeance, and they suffered the Chancellor of the State to discharge his duties until the Constitutional restriction as to age compelled him to retire from office. And as to the Judges of the Supreme Court they were getting rid of by a new modification of that Court, but not by a naked act of power turning them out of office. Mr. S. bore honourable testimony to the assiduity and talent displayed by the Court of Appeals, and remonstrated warmly against the idea of turning off all the Judges without a charge against them. He thought the violence of such a proceeding equalled only by the weakness of the reasons given in support of it. He took up the arguments of Mr. Powell, and argued to shew that they furnished no excuse whatever for so arbitrary an act. As to the hope that they would be re-appointed by the Legislature, it was only saying, that they would perform an act of flagrant injustice in the hope that the Legislature would redress the wrong.

He denied that those who were infirm or disabled, whose situation claimed sympathy and tenderness, would have their feelings soothed by being dismissed only in company with all the rest: because an omission of them when the others should be re-appointed, especially after the ground had expressly been avowed, that all who were competent and worthy Judges would certainly be re-appointed, would wound

them quite as much as if they had been excluded while others were retained. But suppose the effect to be different, where was the morality of doing an act of flagrant injustice to all, for the sake of shielding the feelings of a few?

Mr. S. concluded by recapitulating the ground he had taken, and presenting them in one final appeal to the Convention, against what he conceived so flagrant an outrage on duty and propriety.

Mr. Green asked and obtained leave to omit giving his vote.

Mr. Scott then addressed the Convention as follows:

It is with infinite reluctance, at this late hour of the day, when so much impatience is manifested by the House, that I ask its attention for a single moment. The peculiar relation in which I stand to the resolution under consideration, makes it a duty which I owe to myself and to the House, after the strong appeals of its opposers, to throw myself on the indulgence of the House for a few moments. I do not propose to attempt a laboured argument, much less a reply to those which have been urged against the resolution, but will explain, very briefly, some of the reasons which have influenced me.

I was the mover of the resolution in the Select Committee. I am nevertheless one of those who estimate the value of an independent Judiciary above all price. Sir, I will vote for any Constitution which any portion of this House may propose, with an independent Judiciary, in preference to any Constitution which any other portion of this House can propose with a dependent Judiciary. It has long been my settled opinion, that the blessings of free Government, the safety and happiness of the people, and especially of the middle and lower classes, cannot long be secured by any form of Government without an able and upright bench; and that such an one can only be obtained by making the Judges independent. I do not mean an independence of the ordinary appointing power.

We are assembled here as the representatives of a people having an existing social system, consisting of a body of laws, fundamental and ordinary, and a set of functionaries to carry those laws into operation. Our task is to recommend to that people such changes in their social system as we think conducive to their happiness. We may recommend it to them to change their fundamental law, their ordinary laws, or to dismiss the whole, or any part of their servants. I think it expedient to recommend to them to dismiss their Judges. I am not one of those who think, that under the existing Constitution, or any Constitution which declares that the Judges shall hold their office during good behaviour, a Judge can be deprived of his office by abolishing his court. I cannot perceive the distinction between taking the man from the office, and taking the office from the man. The consequence, to my apprehension, is the same in either case. Mr. President, it would be a violation of order, if I were to take you out of that Chair, and I cannot perceive how I should be less guilty of a violation of order, if I were to take the chair from under you. This view of the subject, rendered it necessary, if it be proper that the present Judges should be removed, that their removal should be effected by a constitutional provision. Such a provision is no longer necessary, after the adoption of the amendment to the first resolution: under that provision, the Judges may at any time be legislated out of office. It is under a faint hope, that that amendment may not receive the final sanction of this House, that I am induced to say any thing on the resolution under consideration.

Mr. President, it is agreed on all hands, that our present Judicial system has not accomplished the end proposed—a speedy and satisfactory administration of justice. This failure must arise either from a defect in the system, or from the fault of the Judges, or both. If it be attributable to the defects of the system, then it is desirable that the Legislature should have free scope to amend it. We should not impose upon them the necessity of suiting the system to the Judges, but enable them to select Judges to suit a system, which, in their wisdom, shall seem best. If it arises from the fault of the Judges, then they ought to be removed. Sir, if I believed for a moment, that party spirit or faction, or a personal dislike to the Judges mingled in this matter, or would enter into the question of their re-appointment, I should be the last man in the Convention to propose such a measure. I believe that all of them who are worthy, will be re-appointed. It is because I believe the public good requires it, that I proposed the resolution under consideration. But whilst I feel it my duty to make this sacrifice, of individuals to the public good, for such I consider it, I am for making compensation to such as shall not be re-appointed, so far as money can compensate. I prefer an amendment which shall make it obligatory on the Legislature to make that compensation, and in the Committee of the Whole, voted against the resolution because that amendment failed. Subsequent reflection induces me to vote for the resolution, provided the latter clause of it be retained. I consider that clause a declaration of the opinion of this Convention, that the Legislature ought to make compensation; and relying that a recommendation from such a quarter will not be unheeded, I am content, though reluctantly, to take the resolution as it stands. But if that clause be stricken out, I shall vote against the resolution. Such a provision

can have no tendency to introduce the much dreaded pension system. As a removal of the Judges on the one hand, by an exertion of the primary sovereign power of the people, does not impair the independence of the Judiciary, so on the other, a compensation allowed by the same power to those who may not be re-appointed, can furnish no precedent to the ordinary Legislature for the establishment of pensions and sinecures.

The question was at length taken on striking out the clause which declares that "the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities and past services, shall be deemed reasonable."

And decided as follows by ayes and noes:

Ayes—Messrs. Barbour, (President,) Taylor of Chesterfield, Dromgoole, Alexander, Goode, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Fitzhugh, Mason of Frederick, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Mathews, Oglesby, Laidley, Summers, Morgan, Campbell of Brooke, Tazewell, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson and Bates—50.

Noes—Messrs. Jones, Leigh of Chesterfield, Giles, Brodnax, Marshall, Tyler, Johnson, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Henderson, Osborne, Cooke, Powell, Griggs, Naylor, Donaldson, Boyd, Pendleton, Morris, Garnett, Cloyd, Chapman, Duncan, See, Doddridge, Wilson, Barbour of Culpeper, Scott, Loyall, Prentis, Grigsby, Massie, Neale, Rose, Coalter, Joynes, Bayly and Perrin—43.

So the clause was stricken out.

The question was then put on destroying the whole resolution by striking out the word "Resolved," when,

Mr. Summers observed, that his opinions had been in harmony with the resolution: That he came to the House intending to vote for it, and notwithstanding the arguments which he had heard, his opinions remained unchanged, although not entirely unshaken; he however felt much deference and respect for the example of the gentlemen over the way, (Judge Coalter and Judge Green,) and had determined not to vote on the question, should it be the pleasure of the House to excuse him. Whereupon he was excused.

The question was then taken, and decided by ayes and noes as follows:

Ayes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Marshall, Nicholas, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Logan, Madison, Stanard, Holladay, Mercer, Henderson, Cooke, Griggs, Naylor, Pendleton, Roane, Morris, Garnett, Scott, Prentis, Grigsby, Pleasants, Bates, Neale and Rose—32.

Noes—Messrs. Barbour, (President,) Jones, Dromgoole, Alexander, Goode, Tyler, Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Randolph, Leigh of Halifax, Venable, Fitzhugh, Osborne, Powell, Mason of Frederick, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Taylor of Caroline, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Tazewell, Loyall, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Joynes, Bayly and Perrin—59.

So the resolution was retained, except the last clause. It reads as follows:

"But the Legislature may cause to be paid to such of them as shall not be re-appointed, such sum as, from their age, infirmities, and past services, shall be deemed reasonable."

The third resolution was then agreed to without amendment as follows:

"*Resolved*, That the present Judges of the Court of Appeals, Judges of the General Court and Chancellors, shall remain in office until the expiration of the first session of the Legislature elected under the new Constitution, and no longer."

Mr. Doddridge now moved the consideration of his resolution for the appointment of a Select Committee.

Mr. Giles moved an adjournment, but it was negatived.

Mr. D. having withdrawn his motion,

The eighth resolution of the Judicial Committee was then read as follows:

"*Resolved*, That Judges may be removed from office by a vote of the General Assembly: but two-thirds of the whole number of each House must concur in such vote, and the cause of removal shall be entered on the journals of each. The Judge against whom the Legislature is about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon."

Mr. Stuart moved to amend the resolution by striking out the following words, "and the cause of such removal shall be entered on the journals of each. The Judge against

whom the Legislature is about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon."

The motion was negatived without a count. And the resolution was agreed to.

Mr. Doddridge's resolution was now taken up, and after having been amended at the suggestion of Mr. Summers, by striking out the words "and proposed in it," was agreed to. The blank for the number of the Committee, was filled with the word "seven." And the House then adjourned.

WEDNESDAY, DECEMBER 30, 1829.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Armstrong of the Presbyterian Church.

The following gentlemen were announced as composing the Select Committee appointed to *draught the new Constitution*, and submit it to the Convention, viz:

Messrs. Doddridge, Madison, Marshall, Johnson, Leigh of Chesterfield, Tazewell and Cooke.

Mr. Stuart of Patrick called up the resolution he had some days since offered, and which had been laid upon the table: and said, that at the suggestion of a friend, for whose judgment he entertained the highest respect, he had modified his resolution so as to read as follows:

"*Resolved*, That the Legislature have power to provide by law, that no person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, under the Government of this Commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may or might be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance: and every person who shall be elected or appointed as aforesaid, shall, before he enters upon the duties of his office, take such oath as is or may be prescribed by law, declaring that he has not violated the provision of the Constitution; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or been the bearer of such challenge or acceptance."

Mr. Stuart observed, that the good effects of the existing anti-duelling law were universally admitted, and were to be attributed to the fact that it addressed itself to the ambition of that class of persons who were most frequently engaged in this practice. The reason he had so modified the resolution as to include seconds as well as principals, was this, that many a high-minded man would disregard any evil consequences interposed in his way, if they extended to himself alone, while the same man, under the same provocation, might hesitate at involving a friend in the punishment of disfranchisement, by asking him to accompany him to the field.

Mr. Leigh said, that in one part of the object sought to be attained by this resolution, he most fully and heartily concurred: it was that clause which went to extend an amnesty to those, generally very young and inconsiderate men, who had become disfranchised by the operation of the act of 1810. But he was opposed to the other part of it, which referred to that act (now in the power of the Legislature and liable to be repealed) and made it a constitutional provision, disqualifying those on whom it had taken effect for all time to come. He considered this in utter contrariety to all correct notions of political justice, which required that there should be no crime, for the pardon of which some provision should not be made by law.

Even treason, a crime which aimed at the existence of Government, and of society itself, was not placed beyond the scope of this principle: for, the Constitution of the United States, and indeed the Government of every civilized nation in the world, had provided some authority by which it might be pardoned. And it must necessarily be so. For, as the purpose of punishment was in no case the mere infliction of pain, or gratification of personal vengeance, but alone the public good, by the prevention of crimes, it might often be as essential to the public good that treason should be pardoned, as that it should be punished. Punishment, when inflicted deliberately by rational and reflecting men, and pronounced by a Judge, as the organ of the law, was intended as an example and warning, to deter others from the commission of the like offences. This was its object, and the whole of its legitimate object: and there was not a crime in the decalogue, whether treason, murder, arson, or any other heinous offence, to which there was not authority in the Government to extend the hand of pardon. Yet this single crime was to be made an exception! The pursuit of notions of honor, (false honor, and mistaken notions, if gentlemen have it so,) to which

the young, the inexperienced, and the high-spirited, were the most naturally exposed; this was to be pronounced an offence for which no mercy was to be provided by any authority in the Commonwealth. Mr. L. said, he was not going to impeach the policy of the anti-duelling law. He had on that subject his own fixed opinions; but they were so dissented from by most of his friends, that he should not intrude them on the Convention, as probably not more than two or three would be found to concur with him. He went on the supposition that that law was politic, just and wise. It had, in its practical operation, prevailed in a great degree to discourage the practice of duelling, and its operation would probably continue to do so, until all these notions of false honor were obliterated from the human heart and understanding. But Mr. L. demanded to know on what principle it was just and right, that a boy of eighteen, or a youth of twenty or twenty-one years old, who felt that he had been aggrieved, who was sensitive to the disgrace of an insult, (to him the strongest feeling in the world,) and had under such feelings called for what he had been taught to consider as honorable satisfaction—whether he had shed one single drop of blood or no—must be disfranchised? called off from all the paths of honorable ambition, from all hope of distinction in the service of his country, and no reserve allowed for the possibility of pardon? He could conceive of a case, nay, he knew of many cases, where youths of the first talents, of the highest integrity, of the truest honor, of the warmest patriotism, yes, and of the very finest feelings of humanity that ever inhabited the human breast, had been deprived by the existing law of all place in the public confidence, and all hope of public employment. He was not for abolishing the law. Let that act remain in the code; its effects, though they might be severe, were not remediless: a pardon might be granted after a term of years. Let the man, who in his heedless youth had committed such an offence, but who had afterward, by diligent application, and an unstained course of conduct, prepared himself for every department of the service of the State, be left to the mercy of the Legislature, and let the hand of pardon at length be extended to receive him. They were taught, on the highest of all authority, that repentance won the favor of Almighty God; and that the penitent criminal might be met by that favour, even at the very moment he was expiating, with his life, his offences against the laws of both God and man. But this crime, arising from an excess, or a misapprehension of true honor, was one on which none could look with such hostility as to believe its punishment ought to be absolute, irremediable, unending disfranchisement. Mr. L. said, he was very sure the gentleman from Patrick could not, and did not, concur in his own personal feelings, with the tone and aspect of the resolution he had offered. That gentleman saw and felt, he was well persuaded, the justice and propriety of extending mercy to those who had heretofore been guilty of this offence. And feeling thus, how could he think it right to enact an endless exclusion to all others who should in like manner offend, though they might afterwards atone for the crime by ten, twenty, or thirty years of the most useful and exemplary life and deportment? All he asked was, that the State should act in the same manner, whatever that might be, toward those who should offend thereafter, as toward those who had offended theretofore. The number, thus far, was not large: it was, comparatively, very small—very small, indeed. He knew of but three or four persons so situated; and in every instance, they were persons who stood now in such a relation to society, that every body—every body—without hesitation, would say, that the punishment ought to be withdrawn.

Mr. L. said, that his attention had been drawn to the subject, when he was in the Legislature of the State. A young gentleman, than whom, none ever possessed a kinder heart—a temper less disposed to injure any one—nay, than whom, none ever possessed more of the milk of human kindness, toward the whole race, was insulted grievously. He had himself been present, when the insult was given, and a more unendurable one, he had never witnessed in his life; and he had resented it by challenging the offender. He would not say, that it was right to do so: but this he would say, that at that young man's time of life, he should have acted precisely in the same way, or even worse. The consequence was, his exclusion from all public affairs: and the exclusion had embittered the residue of his life. (He was now no more.) Why was such a young man denied all hope of serving his country? What crime had he committed? He had sent a challenge. That was his whole offence.

Mr. L. concluded, by expressing his hope, that an amnesty would be extended to all past offenders, and that the Legislature would be left at liberty to grant a similar amnesty, when it should, on the whole, judge it to be expedient. That was the true and just ground on which to place the matter. Let it not be, that in Virginia, the offence of *sending a challenge*, was the *only one* which could receive *no pardon* on earth: while murder, treason, perjury, and every other possible crime, were placed within the reach of mercy.

Mr. Leigh then moved to amend the resolution, by striking out all that part of it, which had a prospective operation.

Mr. Naylor said, that the object of the gentleman could easily be obtained, by an amendment which he held in his hand, and which he should presently offer. He felt great anxiety, that such a provision as was proposed, should be introduced into the Constitution. His reasons were simple and obvious. He should be very willing to leave the subject to Legislative controul; but he had often trembled for the existence of the present law, which was, in its operation, so efficient and so salutary, and which had, he was confident, preserved already many valuable lives to the Republic. He would call the attention of the House, to the very different state of things, which had taken place since that law had been passed, as contrasted with that which had existed previously. Formerly, hardly a post arrived, that did not bring the intelligence of the fall of some promising young man, the hope of his friends and of his country. These were the very class most exposed to be sacrificed to a false and imaginary honour. Yet, every Session, the most powerful efforts had been made to repeal the law, all founded on the plea, that it was *unconstitutional*. It was to remove that plea forever, that Mr. N. wished to see the provision in the Constitution. The most powerful talents had been brought to bear on the question, and he feared lest some day they might succeed. Make the law constitutional, and put an end to all doubt on the subject. The law was founded in the necessity of the case. The evil had before remained without restraint. The laws against murder were virtually repealed: and no remedy seemed possible, till they resorted to one strong passion to counterbalance the force of another. The passion which led men to pursue the phantom—honour—(not always a phantom, but such, certainly, in the bloody field of the duellist)—could only be met and counteracted by that equally strong passion, which led men to seek distinction in public life: and, happily, both passions usually inhabited the same breast. Few fell in duels, but such as looked forward to the possession of office in some form: and many such were eminently fitted to serve their country in public stations.

Mr. N. offered his amendment, but withdrew and modified it, so as to appear in the following form:

Resolved, That a provision ought to be inserted in the Constitution, declaratory of the constitutionality of the act of the General Assembly, entitled “an act to suppress duelling;” but extending a general pardon to all offenders against the provisions of the act, up to the present period.”

Mr. Leigh, who had at first agreed to withdraw his motion to strike out, after the amendment had been modified, renewed it. His object was to secure an amnesty, up to the present time, and to leave the entire subject to the Legislature as to the future.

Mr. Stuart said, that he believed it to be universally agreed, that duelling was a pernicious and barbarous practice, and ought to be suppressed. He united in the opinion which had been expressed, as to the salutary operation of the statute on the subject; and believed, that but for the doubt which had been started, as to its constitutionality, that law would, by this time, have succeeded in wholly suppressing the practice. But, so long as the Legislature should be clothed with power to pardon duellists, the practice would continue to prevail. He wished to shut the door effectually against it. The object of his resolution was prevention, not punishment. His hope was, that public opinion would gradually be corrected. If children were to be educated under the idea that to send or accept a challenge would disqualify a man for all objects of ambition, they would be free from much of the temptation of committing that offence. But they had formerly been taught that they were bound to resent an insult, and that fighting a duel set a seal on them as men of honour and men of courage. No wonder, that such a persuasion should exert a powerful effect on young and ardent minds. Mr. S. said he saw no necessity for any constitutional amnesty. If that was all that was to be left in the resolution; he should prefer leaving the whole subject to the Legislature. If pardon was to be provided by the Constitution, each offender would believe that if he fought he should certainly be pardoned, because the circumstances of his case were so strong that the Legislature never could resist them: and thus the salutary effect of the statute would be destroyed. There would be danger, too, of favoritism: young men of family, personally known to the Legislature, and allied to some of the members, would readily be excused, while others more obscure, though not more guilty, would fall under the full operation of the law. He wished to see all put upon one level; and let all know that if they would thus offend against society, they must be forever excluded from its employment in any public station. He could not agree to either of the amendments proposed; he thought they would provide no effectual check to the evil. He was opposed to allowing any amnesty, unless the residue of his resolution should also be adopted.

Mr. M'Coy said, that he felt reluctance at voting for any constitutional provision on this subject. He believed much good had been done by the law. But it seemed to him that unless the neighbouring States, and other nations too, would all agree to make similar provisions in their Constitutions, it would be placing the people of Virginia in a very humiliating condition. They would be liable to be insulted with impunity by the citizens of all the neighbouring States and of all surrounding nations.

He thought the matter ought to be left to the Legislature. Let them repeal their statute, if they pleased. Let them grant pardons, if they pleased. It seemed hard that Virginians must bear the insults of all that chose to insult them, and have their hands tied. He liked to see the citizens of their State put upon an equal footing with the citizens of other States. He could not vote for the resolution. The law had done good at home; but it had had an unhappy effect on the citizens of Virginia elsewhere. He knew that some gentlemen had felt its effects in a very painful manner as it related to the citizens of other States. He was for striking out all but the amnesty.

Mr. Wilson of Monongalia, wished to offer an observation or two in reply to the gentleman from Pendleton. That gentleman thought that the adoption of the resolution would place the people of Virginia in a humiliating attitude. The matter appeared to him in a very different light. It seemed to him, that in adopting such a measure, Virginia was leading the van in an attempt to put down an odious practice, which had originated in barbarous ages, and in defence of which no good reason whatever could be adduced: in so doing, he thought, she had acquired more immortal honour than by all her other achievements. So far from being sunk or humiliated, in his view she was elevated as a State. The gentleman seemed to suppose that Virginians would be placed in a degrading situation, and be exposed to the insults of the citizens of other States and nations, unless they were allowed to resort to the pistol or the sword. He was not of that opinion. Let a provision be introduced into the Constitution, which would stamp the seal of perpetual disfranchisement on all who would fight a duel—then let the citizen of another State insult him, and he would look down upon such a man with contempt. He should say to such a man, "You must be a coward: you know that I cannot resent your behaviour by challenging you without blasting forever all my hopes and prospects in Virginia—your insult recoils upon yourself—it is you that are the dastard, not I."

Mr. McCoy said in reply, that if public opinion did not remedy this evil, nothing that they could do would avail to prevent it. The gentleman's observation reminded him of the Quakers. He should incline a good deal to be a Quaker, but they would not fight. Now, if all other nations would adopt the same plan; if they would all agree to do away with wars and fighting, then he should turn Quaker. But, unless all the other States of the Union, and all other nations would agree to the bargain, he would not consent to put this clause into the Constitution. The gentleman from Monongalia had reasoned well. He entirely agreed with him that the man who would insult a Virginian, whose hands were tied, must be a dastard. But the worst of it was, there would always be such dastards. He was willing to leave the matter with the Legislature, where it now was. Let the law do as much good as it could. But the law would never remedy the evil, unless public opinion went with the law. He believed the practice was going down fast. By putting this provision in the Constitution, he queraed whether they should not do more evil than good.

Mr. Stanard said, he hoped there would be no constitutional provision on the subject. He was willing to leave it with the Legislature, and to remove the doubts, if any existed, as to the authority of that body to act upon it. It would be very easy to do so: and with that view he moved to insert, between the word "*Resolved*," and the words which immediately followed it, these words: "That the Legislature shall have power to declare by law," so as to make the whole resolution read:

"*Resolved*, That the Legislature shall have power to declare by law, that no person shall be capable of holding or being elected to any post of profit, trust, or emolument, civil or military, under the government of this Commonwealth, who shall hereafter fight a duel, or send or accept a challenge, to fight a duel, the probable issue of which may or might be the death of the challenger or challenged, or who shall be second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance. But, no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or been the bearer of such challenge or acceptance."

Mr. Gordon said, that during the time he had been in the Legislature he had never heard the question started as to the constitutionality of the statute, but only as to the constitutionality of that part of it which applied to members of the Assembly, and which went to add another qualification to membership, beyond those which the Constitution laid down.

Mr. Doddridge said, that he had heard some of the ablest arguments he ever had heard in the Assembly in support of the idea which the gentleman from Albemarle said he had never heard broached there. He had been present on two different occasions when an application had been made for pardon, and he had resisted both applications, with a firm determination, if possible, to cause the statute to re-act on public opinion. He had voted with a heavy heart. He had heard the argument the gentleman from Albemarle said he had never heard, and that from able lips, in the case referred to by the gentleman from Chesterfield. He should consider it a blessing to

have all doubts of a constitutional kind removed from the act, and to see the law and public opinion moving harmoniously together.

Mr. Stuart objected to Mr. Stanard's amendment, as not being imperative, but permissive only. If it was only said, that the Legislature *might* pass such a statute, then they *might* also repeal it again. He wished the provision to be permanent, and, therefore, he would make it Constitutional.

Mr. Gordon again declared, that he had never heard the opinion advanced in the Legislature, that the anti-duelling act was unconstitutional in its application to officers of the Commonwealth other than members of Assembly. His friend from Hanover, (looking to Mr. Morris,) would be able to support him in this view. That gentleman had made an able report on the subject, but the votes of the Assembly had been equally divided, and it was not adopted. The Session following, the constitutional question had been given up, and the opposition was grounded on considerations of expediency.

Mr. Leigh said, that his recollections corresponded exactly with the statement of the gentleman from Albemarle. He had been himself the first to start the question as to the constitutionality of the law. Judge Roane had been asked his opinion, and had declared that the law would not apply to the case of Thompson; but the understanding was, that he considered it as unconstitutional, so far as it applied to members of the Assembly. Mr. L. said he should vote for the amendment of Mr. Stanard.

Mr. Morris said, that the gentleman from Brooke, Mr. Doddridge, had been longer in the Legislature than he had; but for himself he could say that he had never heard it questioned, but the Legislature might annex such a test as was required by the anti-duelling law to the tenure of office when the qualifications were presented by the Constitution. In the case the gentleman from Albemarle referred to, the unconstitutionality was held to apply only where no qualifications were required by the Constitution. But, the gentleman was certainly mistaken as to the Legislature's having been equally divided: the gentleman and himself had been able to get no more than forty-five votes.

Mr. Doddridge said, they were all agreed, that a doubt had been argued as to the constitutionality of the law. This was what he referred to. Possibly he had not heard the gentleman from Albemarle correctly.

Mr. Madison said, that the amendment would avoid the recognition of the general power of disfranchisement, as residing in the Legislature. He recollected, that after the suppression of Shay's rebellion, an attempt had been made in the Legislature of Massachusetts, to disfranchise all who had united in that insurrection. In high party times, such a power would be extremely dangerous. To allow this power in a particular case, was one thing; to grant it in all cases, was a very different thing. All he wished was, to avoid recognizing in the Legislature any general power of disfranchisement.

Mr. Stanard said, he was greatly encouraged by the approbation of the venerable gentleman from Orange. If the amendment had the effect of fettering the power of the Legislature in all other cases, this was of itself a strong inducement to agree to the amendment.

Mr. Mercer said, there was one part of the resolution, in which he felt much interest. It had been said, that the Legislature had power to superadd to the qualifications for office, where qualifications were required by the Constitution, and to prescribe them when the Constitution had prescribed none. He had always thought this a great defect in the existing Constitution. Certainly, where no qualification was laid down by the Constitution, they could not rightfully be prescribed by the Legislature; and when the Constitution had prescribed them, the Legislature had no right to extend the constitutional requirement. If the Constitution declared, that in order to be eligible to the office of Governor, a man should possess such and such qualifications, he who possessed them ought to be eligible, and the Legislature could not require any thing more, by any act of its own. If there was any doubt on this subject, the Constitution ought to put an end to it. He considered it a dangerous doctrine to maintain otherwise.

Mr. Randolph addressed the House: I submit to the venerable gentleman from Orange—and to the gentleman from Spottsylvania, whether the argument of the gentleman from Orange, is such as ought to have so deep an effect on the gentleman from Spottsylvania, and whether it be not in truth destructive of the adoption of the amendment of that gentleman. I have thought a great deal on this subject, and though it does not become me to question the motives of the Legislature of Virginia—yet I do verily believe that the anti-duelling act is in utter subversion of every fundamental principle of free Government. I submit to the gentleman from Spottsylvania whether empowering the Legislature to visit on one description of offences this most odious of all punishments, disfranchisement, be any denial to the Legislature of the power to extend it whithersoever they shall please? I ask the gentleman from Spottsylvania, on what principle the Legislature has arrogated to itself the power to

interpose in this manner, on this behalf, which will not imply a similar power to interpose in the same manner, on any other behalf? The evils of such a principle have long been foreseen, by minds infinitely less strong and less clear than that of the gentleman from Orange. It strikes at once at the root of all free Government.

Mr. President, it has been my misfortune to have lived in an age of fanaticism and cant. And I would go to the uttermost ends of the earth to find a refuge, if there be one, from this spirit of fanaticism and this spirit of cant. Sir, why not at once embody the entire decalogue? Aye and the whole Bible—Old and New Testaments—and a system of philosophy into the bargain—and gulph down the whole at one oath? The power is the same. The principle is the same. Sir, do you not believe—nay—do you not know—that there are persons in this Assembly, who believe in their consciences, that to hold a human being in bondage is a crime of the blackest die, not a whit inferior to murder itself? This spirit of fanaticism is spreading—and it is one of the strongest feelings that exists among men, when once it gets the upper hand. Suppose it should choose to prescribe an oath, that a man never had held, and never would hold a human being in bondage—and this on pain of disqualification from all offices under the Commonwealth? Is not that an offence as much in the teeth of the Bill of Rights, and of the great and sweeping principles it lays down, as to all men being by nature equally free? Then, conceive to yourself a Wilberforce, or a Master Stephen, setting forth before the House of Burgesses, the horrors of this oppressive, this unjust, this nefarious, this bloody, this cruel, this anti-christian practice, of holding men and women in bondage. Sir, no matter to what point it blows, this tornado of fanaticism sweeps all before it. Mr. President, was there ever a Constitution on earth that gave the Legislature power to punish particular offences in a particular manner? Is it not an anomaly? Was such a thing ever heard of in any nation, civilized, or uncivilized? In Christendom, or Heathenness? Leave this whole matter where it is.—Sir, I am not so much surprised at seeing some men taking this course. But when I see men for whose characters I feel the most profound respect, *lending* themselves to a particular purpose, at the expense of the great fundamental principles of free Government, what am I to think? Sir, the Convention have no right to put any such clause into the Constitution. As was very truly observed, they have the power to do it; but they have not the right, nor a shadow of right. Why single out this particular class of offences? The traitor, who has plotted the re-introduction of the Tarquins into the Capitol, *he* is not pronounced unpardonable: you do not tender to *him* an oath that he has never plotted to overturn your Government—he is not to be put to the torture by an oath—but your oath is in the very spirit of the Spanish Inquisition—it puts the man of virtue only to the torture, and passes over the ruffian and assassin. It offers a premium for cowardice—a premium for falsehood—a premium for servility—a premium for slander—a premium for all that is base and abject in human character.

Sir, I have no hesitation in saying with the gentleman from Chesterfield, that place a man's honour in one scale, and all the offices in the gift of King or Keisar in the other, and a man of honour would spurn them all in comparison with his violated feelings and his violated reputation. Never was there such a test attempted under the sun—never at least in any Government that arrogated to itself the character of a free Republic. This is the entering wedge. Admit the principle, and you may go on allowing one party to proscribe the other, until at length both the great parties in your State will find themselves out of the pale of the Constitution. Sir, I have nothing more to say. If the people are disposed to submit to tyrannical laws imposed on them by their own Legislature, let them do it.

Mr. Stanard said, that every argument of the gentleman from Charlotte went to give a preference to the amendment over the original text, howmuchsoever it might be against that text itself. The gentleman from Charlotte enquired whether, on the principle of the anti-duelling law, the Legislature might not extend the same disqualification to the other offences against morals, or offences against party, or offences against religion, or against fanaticism? He answered—yes, and that was the most powerful argument against the existence of the statute, as being an example for future imitation. But strong as might be the argument against the principle of the law, and cogent as might be the objection, that it furnished a precedent for extending that principle to other things, and thereby produce all the consequences which the gentleman apprehended, yet did not the gentleman from Charlotte perceive that it was the very function of the amendment, by implication, to *prevent* such an extension of the principle? to fetter the power! To give it in one case, and in one case only? And thereby to prevent fanaticism from extending it to any other? To *limit* the power of the Legislature? So that it should not disfranchise men for other classes of offences? He understood that the grant of one power was, in every sound principle of construction, a negation of all others not granted.

[Mr. Randolph—not in practice.]

Mr. S. said, he did not speak of irregular and unauthorised exertions of authority—for, against them it was impossible to guard by any written law. This was the consequence dreaded—nay, the effort had already been made to extend the principle to other cases under the influence of that fanaticism and cant of which the gentleman had spoken. [Mr. Randolph—very probable, Sir.] But the operation of the amendment would be to preclude all other attempts of the kind.

The gentleman had asked, whether there ever had been in the whole world such an experiment made, as to apply the action of the Constitution to one individual species of crime? The gentleman must surely forget that in the very Constitution the Convention was about to make, there was a sweeping clause, in that part of it which treated of the Right of Suffrage, which disfranchised at one blow all who had been convicted of *any* infamous crime: they were all, without an exception, absolutely and forever, deprived of the right to vote. Which was the more extraordinary of the two, that the Constitution should empower the Legislature to disfranchise for one particular kind of offence, or that the Constitution should, itself, disfranchise for a whole list of offences? Yet, such was the fact. It did disfranchise, for all time, those who should have been convicted of “any infamous offence.”

The one, surely, was a more mitigated form of authority than the other. The argument of the gentleman from Charlotte did not apply to the competing question between the amendment and the resolution. And if the amendment should be agreed to, his other argument would not apply, because granting power in this one isolated case would be a negation of the power in all other cases.

Mr. S. said, he had no great solicitude on the subject, except as to the granting of an amnesty to past offenders. He earnestly hoped the Convention would not rise without agreeing to a provision of that kind. The offence had been committed in almost every case by young men reared and fostered in principles not now so general as at that time—principles, which they had imbibed as honourable before any change had taken place in public opinion: they had in consequence been disfranchised: many of them belonged to the most respectable part of the community: yet, they were the objects of perpetual reproach; and being now beyond the range of hope and of ambition, were exposed to the temptation of renewing the offence.

Mr. Randolph said, that the gentleman must perceive at once, that in the case to which he had referred, the House had been settling the qualifications which should entitle a man to exercise the Right of Suffrage. Now, what assignable relation, asked Mr. R., can the logical mind of the gentleman from Spottsylvania see between an organic law, settling the question as to the Right of Suffrage, as to which, in the nature of the case, some must be disqualified (or the term qualification can have no meaning,) and such a proposition as that now offered to the House? It is unnecessary that I should point out the difference. I hope I shall not be understood as entering at all into the question of the moral or the legal turpitude of duelling: whether it is *malum in se*, or *malum prohibitum* only. With that question I have nothing to do. My business is with a provision in the Constitution for handling a particular offence. According to the opinion of some it is *malum in se*: base—flagitious. If it be so, proceed against the offender as you would against a murderer, an incendiary, a violator of female virginity; as you do against all other terrible offenders. Proceed against him according to the principles of free Government, the principles of Magna Charta, and of all your Constitutions. Carry him before the grand jury—then place him before a petit jury, convict him according to law, and then inflict your infamous punishment and disqualify him; do this; if such be your rage and your fanaticism; but in God's name, do it according to the forms of justice which have been established as much for the protection of the innocent, as for the punishment of the guilty. What I object to is, that you shall single out one particular species of offence, and deal with that not according to the principles and spirit of your Constitution. In some of the State Constitutions, it is wisely declared, that there shall be no cruel or unusual punishments enacted: but disfranchisement is a punishment both unusual and cruel. All I ask is, not to make a *favoured class* of traitors, murderers, house-burners, thieves and forgers, and give them the benefit of all the forms of the Constitution, while you take them away from another class, of whom your hearts, if not “desperately wicked,” are at least “deceitful above all things,” when you say you think they are so very infamous. I want to know to what man of wealth and of talents, and with no blot on his escutcheon *but this*, any among you would refuse the hand of a daughter or a sister? It is in vain to talk. Public opinion is the other way. You will vote for a man who has fought a duel, for President of the United States, and then you come back here and gravely declare that no such man shall be a member of that august and illustrious assembly, the House of Burgesses! Sir, it is overshooting the mark. In the words of an eloquent British civilian, it is “attempting rigidly to screw up right into wrong:” yes, Sir, every such provision is nothing else but an attempt rigidly to screw up right into wrong. *Summum jus, summa injuria*. It is a sanctimonious sort of republicanism not to my taste—not at all. Give me the

good ancient republicanism—and let it not be said, that in proportion as we receded from our colonial state, we departed from the true principles of freemen. Give me none of this putting men to the question, ordinary and extraordinary—this putting a man on his oath to declare what he has done and what he has not done. Sir, I would not believe such a man: I would not believe him upon his oath.

Mr. Naylor rose in reply: Could he believe that this measure had its origin in fanaticism or cant, he should be the first to repel it. But so far from this, if he had been brought up in the faith of the heathen mythology, he should still think that such a measure was dictated by sound policy. If it was sound policy to preserve the best blood of the land—to cherish the ripest hopes of the republic—to prevent scenes which, whenever they occurred, shrouded the face of society in mourning—if this was sound policy, and one of the most sacred duties of a statesman, the measure which was essayed as a means of accomplishing it, was not the offspring of cant, fanaticism, and religious hypocrisy. The gentleman from Charlotte had asked, why single out this particular offence, and make it the object of so severe a punishment? His answer was, that desperate diseases called for desperate remedies. Other remedies had been tried in vain. Nothing but this would reach the case. The law against murder had been virtually repealed. It was in vain to talk about grand juries, petit juries: where was the case in which a man was convicted for murder committed in a duel? The law was nugatory. Was it cant, under such circumstances, to apply to some other remedy to save the lives of valuable citizens? A law was to be judged by its good or bad consequences. The gentleman was a great advocate for the doctrine of expediency, and much opposed to men's standing on abstract rights. Test this measure by his own principles. Had more good or more evil flowed from the enactment of the Statute? And was more good or more evil likely to follow the securing it by a constitutional provision? That good had been produced by the law, he had heard none deny. And where would be the evil of the constitutional provision? A hot-blooded young man would not be able to challenge his adversary (often his bosom friend) to the field.

Mr. N. said, he was as proud of the chivalrous feelings of Virginia, as any of her sons: but he did not wish to see them displayed in such a field.

But was there no other case "singled out?" Had not the Convention deprived Clergymen of a seat in the Legislature? Was not that case quite as peculiar as this? They would exclude Clergymen, because they followed a calling for which all men felt or professed to feel some respect, and yet it was all cant and fanaticism to exclude from the same seat the duellist who had shed, or sought to shed, the blood of his fellow-man. He thought that when the good and bad consequences of any measure were weighed, and the good was found to preponderate, it ought to be rendered permanent. The people he was confident desired the disqualification to continue: and as the amendment of Mr. Stanard accomplished all the object he had had in view, he was content to waive his own amendment, and should vote for that of the gentleman from Spottsylvania.

Mr. Leigh said, that he understood the question at present to be as to the preference between the resolution with, and without, the amendment. He preferred the resolution *with* the amendment, and he should vote accordingly. If afterward the House chose to strike out the whole, except the amnesty, it would be competent for them to do so.

The question was now put on Mr. Stanard's amendment, and decided in the affirmative, without a count.

So the amendment was adopted.

Mr. Leigh now moved to strike out the resolution as amended, retaining only that portion of it which related to an amnesty.

The reason for this motion, he said, he had already assigned, and the gentleman from Charlotte much better than himself, and therefore he should not trouble the House with any remarks in support of it.

Mr. Naylor demanded that the question be taken by ayes and noes, and it was so ordered.

Mr. Campbell of Brooke said, that he should not enter into the discussion, but had risen merely to assign the reasons why he should vote against striking out. He had no wish to visit with punishment this class of evil-doers more than others, (and most of the arguments against the resolution had been grounded on such an idea,) but he supported the measure as a means of prevention. He considered it as the best preventive of one of the most barbarous crimes of the age.

Mr. Venable desired the question to be divided, so as first to be taken on so much of the resolution as had no relation to the test oath, separately, and then on the clause which prescribed such oath.

The question was so divided, accordingly; and being put, first, on the former portion of the resolution,

Mr. Cabell moved an indefinite postponement of the whole subject.

Mr. Leigh enquired, if the gentleman wished the amnesty to be included in his motion?

Mr. Cabell said, he was fully persuaded the object of the gentleman from Chesterfield was unattainable, and that the attempt to attain it would only be a waste of time. But as it was now suggested to him by a friend, that the motion he had made was exposed to the same objection, and was likely only to waste the time of the House, he would consent to withdraw it. And he withdrew it accordingly.

The ayes and noes were then called on the first part of Mr. Leigh's motion, viz: to strike out all that part of the resolution which preceded the oath, and they stood as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Dromgoole, Goode, Marshall, Clopton, Johnson, M'Coy, Beirne, Miller, Mason of Southampton, Claiborne, Randolph, Leigh of Halifax, Logan, Holladay, Mason of Frederick, Campbell of Washington, Roane, Taylor of Caroline, Morris, Cloyd, Mathews, Duncan, Summers, Morgan, Barbour of Culpeper, Green, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Cabell, Martin, Gordon, Thompson, Massie, Bates, Bayly and Perrin—45.

Noes—Messrs. Barbour, (President,) Brodnax, Alexander, Tyler, Nicholas, Anderson, Coffman, Harrison, Williamson, Baldwin, Moore, Smith, Baxter, Trezvant, Urquhart, Venable, Madison, Stanard, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Byars, Chapman, Oglesby, Laidley, See, Doddridge, Campbell of Brooke, Wilson, Scott, Claytor, Saunders, Stuart, Pleasants, Neale, Rose, Coalter, Joynes and Upshur—48.

So the House refused to strike out.

The question was then put on striking out the last clause, referring to the oath.

Mr. Stuart said, that this had been resorted to as the only means of getting at the fact; it was an invidious task (and so invidious that none would attempt it,) to stand up in the Assembly and oppose a man's admission to a seat, by offering to prove that he had fought a duel, and thus deprive of his seat an individual whom the people of his district had elected and returned to the Legislature: an oath was the only expedient that remained.

Mr. Venable said, he had a decided objection to excluding any man upon his own oath.

Mr. Cabell said, that with every feeling of respect toward the gentleman from Patrick, he should be opposed to this part of his resolution. He was willing to leave the matter to the Legislature, acting as it would in obedience to public sentiment. A *test oath*, of all measures upon the earth, was most objectionable in his view. He could not endure the thought, that a free man, whom his countrymen had elected to a distinguished office, should be subjected to a worse than inquisitorial torture to oblige him to bear witness against himself. He believed that the objection of his friend from Patrick would be attained as matters now stood. Public sentiment was fast coming into opposition to the practice, and he would not attempt to accelerate it by any constitutional provision like this.

He now renewed his motion for an indefinite postponement of the resolution and amendments.

Mr. Stanard opposed the motion to postpone, which he said rested on incongruous propositions, viz: that it was in the power of the Legislature to prescribe the oath as they had done—and that it was worse than inquisitorial torture to require any such oath. The measure was to be indefinitely postponed, *because* the Legislature already possessed full power, and *because* it had exerted that power to inflict a worse than inquisitorial torture on free citizens! What would be the necessary effect of the gentleman's motion? to cut off, with the rest of the resolution, that clause which contained the amnesty for past offences, and leave it in the power of the Legislature to exert its authority in the most injurious and penal manner possible: to empower the Legislature to disfranchise men not only for this offence, but for any other offences indefinitely. He said to those who were from the lower country, will you vote for such a consequence as this? He said to those who were hostile to the exercise of this power at all by the Legislature, will you thus give a *carte blanche* to the Legislature to act its pleasure? He said to those who were in favour of the law, are you willing to leave the security of that law to the capricious determination of the question as to its constitutionality? He thought that every class of persons in the Convention should concur with one voice to reject the motion to postpone.

Mr. Stuart had one remark to address to those who were friendly to the law, but had voted to strike out the constitutional provision. They did not as yet know whether they were to have an entirely new Constitution, or only the existing Constitution with some new amendments.

If the existing Constitution was in no shape to continue, where would the Legislature get the power to pass any such law? The law itself must go down. As it now existed, it rested on the general power given by the existing Constitution to the

Legislature, to prescribe the qualification of its own members; and if they could on that ground prescribe one oath, they might prescribe twenty: the resolution proposed to give them power to prescribe this one only.

The question was now taken on indefinite postponement, and decided by ayes and noes as follows:

Ayes—Messrs. Dromgoole, Goode, Marshall, Johnson, M'Coy, Miller, Randolph, Leigh of Halifax, Logan, Holladay, Mason of Frederick, Roane, Taylor of Caroline, Morris, Duncan, Summers, Morgan, Loyall, Campbell of Bedford, Branch, Townes, Cabell, Martin, Gordon, Thompson, Massie and Bates—27.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Alexander, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Moore, Beirne, Smith, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Venable, Madison, Stanard, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Laidley, See, Doddridge, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Tazewell, Prentis, Grigsby, Claytor, Saunders, Stuart, Pleasants, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—66.

So the House refused indefinitely to postpone the consideration of the resolution and amendment.

The question was now about to be put on striking out the last clause prescribing the test oath, when

Mr. Stuart expressed his willingness to withdraw it, with consent; but Mr. Doddridge and others objecting,

The question was then taken on striking out, and decided by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Clopton, Baldwin, Johnson, M'Coy, Beirne, Smith, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Mason of Frederick, Campbell of Washington, Roane, Taylor of Caroline, Morris, Cloyd, Duncan, Summers, Morgan, Campbell of Brooke, Barbour of Culpeper, Green, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Cabell, Martin, Gordon, Thompson, Massie, Bates, Neale, Bayly, Upshur and Perrin—53.

Noes—Messrs. Barbour, (President,) Marshall, Tyler, Nicholas, Anderson, Coffman, Harrison, Williamson, Moore, Baxter, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Byars, Chapman, Mathews, Oglesby, Laidley, See, Doddridge, Wilson, Scott, Claytor, Saunders, Stuart, Pleasants, Rose, Coalter and Joynes—40.

So the clause was stricken out.

The question was then taken on agreeing to the resolution as amended, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Alexander, Tyler, Nicholas, Clopton, Anderson, Coffman, Williamson, Baldwin, Moore, Beirne, Smith, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Taylor of Caroline, Morris, Cloyd, Chapman, Oglesby, Duncan, Laidley, Doddridge, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentis, Grigsby, Claytor, Saunders, Stuart, Pleasants, Gordon, Thompson, Massie, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—71.

Noes—Messrs. Dromgoole, Goode, Marshall, Harrison, Johnson, M'Coy, Miller, Randolph, Leigh of Halifax, Logan, Mason of Frederick, Roane, Mathews, Summers, See, Morgan, Campbell of Bedford, Branch, Townes, Cabell, Martin and Bates—22.

So the Convention agreed to the resolution in the following form:

Resolved, That the Legislature shall have power to declare by law, that no person shall be capable of holding or being elected to any post of profit, trust, or emolument, civil or military, under the Government of this Commonwealth, who shall hereafter fight a duel, or send or accept a challenge, to fight a duel, the probable issue of which may or might be the death of the challenger or challenged, or shall be second to either party, or shall in any manner aid or assist in such duel, or who shall be knowingly the bearer of such challenge or acceptance. But, no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or been the bearer of such challenge or acceptance."

Mr. Campbell of Brooke, now moved for the consideration of the following resolution, sometime since offered by him, and laid upon the table:

"Whereas republican institutions and the blessings of free Government originate in, and must always depend upon the intelligence, virtue and patriotism of the community: And whereas, neither intelligence nor virtue can be maintained or promoted in any community without education, it shall always be the duty of the Legislature of this Commonwealth to patronize and encourage such a system of education, or such common schools and seminaries of learning, as will in their wisdom be deemed to be most conducive to secure to the youth of this Commonwealth such an education as may most promote the public good."

The question being put on considering the resolution, the House refused to consider it.

On motion of Mr. Taylor of Chesterfield, the House then proceeded to consider the report of the Committee on the Bill of Rights.

The Committee of the Whole having proposed an amendment to the fifth resolution, that came up first in order for consideration.

The fifth resolution as reported by the Committee, reads as follows:

"*Resolved*, That no title of nobility shall be created or granted, and no person holding any office of profit or trust, *under the United States*, or under any King, Prince, or Foreign State, shall hold any office under this State."

The amendment of the Committee of the Whole proposed to strike out the words "under the United States, or."

Mr. Randolph, (who had not been present in Committee of the Whole when this amendment was agreed to, having been confined by indisposition,) now rose and addressed the House in opposition to its adoption:

Mr. President,—It would be better to amend the resolution by striking out the whole of it, than to take out of it the only words that have any efficacy at all. Who expects that we are ever to have titles of nobility in this country? Nobody. I have no objection, however, to retaining that clause, if it pleases any body. Whoever apprehended the granting of offices of honor and profit to our citizens by foreign States and Princes? Sir, they have beggars enough to provide for at home. These words, which the Committee propose to strike out, are the only part of the resolution which guard against any real danger: and they do look to an obvious—a great—an impending—an immediate danger. Against this, we will not provide: oh no: it is quite unnecessary! And yet this is a case that will happen, and must happen. But against the other case, we will provide most gravely. Sir, there is a farcical solemnity about all this, which is truly amusing. We are to amend the paragraph by striking from it the only words that have any real operation whatever, and which apply to a danger that is immediate, and that must and will occur. There is an old proverb which says, that the king's chaff is better than other men's corn: and it would never be better applied, than to the preference which the people of this Commonwealth give to offices held under the United States Government, to those under the Government of Virginia. We learn in that book, which is the fountain of all wisdom, and of all truth, that no man can serve two masters—that a man cannot serve God and Mammon. Sir, no more can a faithful servant of this Commonwealth be an officer under the United States at the same time—and under the same circumstances. A man can't have two countries at once. And under that lies an important truth. What has been so long the dispute between the Irish people and the English Government? The Irishman feels that he can have but one country: but the Englishman tries to convince him that he can have two; and that he owes a higher allegiance to that country in which he was not born than to that in which he was born and brought up. And until the Englishman can convince him of this, they must go on disputing to the end of the chapter, or until the dispute is cut short by the sabre or the bayonet. Sir, I am against the whole resolution. This subject was wisely taken up by Virginia immediately after the adoption of the Federal Constitution, and she passed laws at once, to prevent an amalgamation of the offices under the General and State Governments. I hope we shall have the ayes and noes on agreeing to this amendment.

Mr. Leigh said, that there was an existing statute which went to disqualify all persons who held office under the General Government, incompatible in their nature with those under the State. But there was one exception to this remark. A person holding a commission as Justice of the Peace was disqualified by serving as a Representative in Congress. Yet these two were not, in his judgment, at all incompatible. A place in Congress was held to be an office under the General Government, according to the present interpretation of the statute by the Legislature of Virginia, and had been so held at all times. Every militia officer held an office under the Commonwealth—ought he to be disqualified for serving as such by holding an office under the United States? The whole purpose of the amendment proposed by the Committee of the Whole, was to preserve the statute as it now stood, and not by the Constitution to go beyond the statutory provision in some parts of it, and to fall short of it in others. The Legislature would still have power to prohibit the holding of offices un-

der both Governments so far as was necessary and proper. But if any fears were apprehended on that subject, a farther amendment could be added to the resolution, and it should have his support, provided it did not introduce a provision equivalent to that now proposed to be stricken out: it ought not to prevent citizens, who held offices valuable to the Commonwealth, from being elected as members of Congress. The statute contained a provision, which prohibited office in the State, to any who received any emolument under the General Government. Now, if that was to be interpreted according to the letter, he should be obliged to oppose it in toto: for, then, a carpenter, who was employed to do a job of work on the court room, occupied by a Federal Court, and who received pay for his work, must be disqualified from all office of honour or profit, under Virginia. This evil, to be sure, was avoided by the prevailing construction of the statute, which applied the prohibition only to such as *continued* statedly to receive emolument under the Federal Government. Mr. L. concluded by observing, that in his opinion, the law as it now stood, and was at present interpreted, defined the proper limit: and he was not for altering that limit, by a constitutional provision.

Mr. Randolph again rose. Sir, I believe that there is an adjudged case: I refer to the case of Blount, where it is determined that a member of Congress is not an officer of the United States. I certainly never so understood, or so considered the station of a member of Congress. He did not receive his commission from the United States. If, indeed, he were appointed by the United States, then he would be a United States' officer.

Mr. R. said, that his objection to agreeing to this amendment was, that it was a *negative pregnant*: it contained a very strong intimation that there ought not to be such a provision made by law. If it had not been attempted in the first instance to raise this banner against Federal encroachment, it would have been one thing: if the question had been untouched, unmooted, undisturbed: but when the attempt to raise the banner had been made, and it was then struck down by the act of this Convention, the case became totally different: it was put on a different foot entirely. Would any man say that the anti-duelling law, for example, stood on the same footing, since the clause in the Constitution prescribing the oath had been stricken out, that it stood on before the attempt was made to insert that clause? All persons must feel that it did not. As to any farther amendment, Mr. R. said, he had come to the Convention with two fixed determinations in his mind: the one had been, to make no propositions at all during its sitting; and to this, with the blessing of God, he hoped to adhere: the other had been, not to open his lips save to answer when his name should be called: to this resolution he had not had the fortitude to adhere. He wished he had.

Mr. Stanard now went into a very extended explanation and recapitulation of all that had been urged in Committee of the Whole, on this subject, and which accounted for the amendment which the Committee had recommended.

Mr. Taylor of Chesterfield said, that at a proper time he should move to insert by way of amendment to the resolution, the act of Assembly on this subject (which he had offered in Committee of the Whole.)

Mr. Leigh observed, that he had said, he was prepared to vote for any proposition by which the offices of the two Governments were properly separated. But the gentleman from Loudoun, (Mr. Mercer.) had said that where no qualifications for office were required by the Constitution, the Legislature had no right to require any—Now, this was a position he had never heard taken before in the whole course of his life. He had never heard the right of the Legislature to do so, so much as questioned before. It had, indeed, been contended, that where the Constitution did lay down certain qualifications, the Legislature might not extend those qualifications, on the principle that *exclusio unius est admissio alterius*. But it seemed to him that the gentleman's principle was irreconcilable with the very notion of State Government. Where a Government exists by enumerated powers, then undoubtedly it was as the gentleman stated. But where the Constitution only interdicted and did not enumerate the powers of the Government, then the Government might do whatever the Constitution did not forbid. This was the distinction between the Federal and the State Governments. Mr. L. said he had no fears that the gentleman from Loudoun ever could prevail, and therefore, he was for striking out the clause and leaving the Legislature to act as it might see proper in the case. He desired to leave the statute in full force: possibly it might be somewhat modified; but he would leave that wholly to the Legislature. He was content with the statute as it stood and was now interpreted. There was one objection to the amendment. If the proposition had been made and should be stricken out by the Convention, it might possibly be considered that the Legislature had no power to pass such an act: but if they refused to do so, it might be construed into a repeal of the act. This statute stood on the same footing with others. It was ancient in its date: and had been amended in 1798, and

now the several laws on the subject were embodied in one statute. Mr. L. said he was for striking out the words as proposed by the Committee of the Whole, and leaving the power of the Legislature unimpaired. He would not consent to say that the Legislature had no powers but such as were expressly given to it by the Constitution: he believed on the contrary that they possessed all powers that were not forbidden.

Mr. Mercer said, that it was hardly necessary for him to rise for the purpose of vindicating the opinion he had advanced when another topic had been under discussion. His opinion was, that where the Constitution laid down any qualification for office, the Legislature had no power to superadd to those qualifications; and when the Constitution required none, the Legislature had no right to require any. The consequences of the opposite position were too alarming, and the extent of the principle too obvious to need illustration.

Mr. Coalter said, he should vote for the Committee's amendment. He had not differed in opinion from the gentleman from Charlotte, (Mr. Randolph:) he wished to see some substantial clause inserted in the place of that which the Committee proposed to strike out: and he should therefore vote for striking out the present words, in the hope that better would be substituted.

Mr. Stanard said, that he wished to amend the resolution by adding to it a clause declaring that no person holding any office of emolument under the General Government, should, at the same time, hold any office of emolument under the Commonwealth of Virginia.

Mr. Fitzhugh, believing the discussion to be only a waste of time, moved the indefinite postponement of the resolution and amendment.

The motion prevailed by a large majority.

So the amendment of the Committee to the fifth resolution itself, was indefinitely postponed.

The Convention now proceeded to the report itself, and took up its resolutions *seriatim*.

The first resolution was read as follows:

“Resolved, as the opinion of this Committee, That the Constitution of this State ought to be so amended as to provide a mode in which future amendments shall be made therein.”

Mr. Randolph addressed the Convention in opposition to its adoption:

Mr. President—I shall vote against this resolution: and I will state as succinctly as I can, my reasons for doing so. I believe that they will, in substance, be found in a very old book, and conveyed in these words “sufficient unto the day, is the evil thereof.” Sir, I have remarked since the commencement of our deliberations—and with no small surprise—a very great anxiety to provide for *futurity*. Gentlemen, for example, are not content with any present discussion of the Constitution, unless we will consent to prescribe for all time hereafter. I had always thought him the most skilful physician, who, when called to a patient, relieved him of the existing malady, without undertaking to prescribe for such as he might by possibility endure thereafter.

Sir, said Mr. R. what is the amount of this provision? It is either mischievous, or it is nugatory. I do not know a greater calamity that can happen to any nation, than having the foundations of its Government unsettled.

Dr. Franklin, who, in shrewdness, especially in all that related to domestic life, was never excelled, used to say, that two movings were equal to one fire. So to any people, two Constitutions are worse than a fire. And gentlemen, as if they were afraid that this besetting sin of Republican Governments, this *rerum novarum lubido*, (to use a very homely phrase, but one that comes pat to the purpose,) this *maggot* of innovation, would cease to bite, are here gravely making provision, that this Constitution, which we should consider as a remedy for all the ills of the body politic, may itself be amended or modified at any future time. Sir, I am against any such provision. I should as soon think of introducing into a marriage contract a provision for divorce; and thus poisoning the greatest blessing of mankind at its very source—at its fountain head. He has seen little, and has reflected less, who does not know that “necessity” is the great, powerful, governing principle of affairs here. Sir, I am not going into that question which puzzled Pandæmonium, the question of liberty and necessity.

“Free will, fix’d fate, foieknowledge, absolute;”

but, I do contend, that necessity is one principal instrument of all the good that man enjoys.

The happiness of the connubial union itself depends greatly on necessity; and when you touch this, you touch the arch, the key-stone of the arch, on which the happiness and well-being of society is founded.

Look at the relation of master and slave; (that opprobrium, in the opinion of some gentlemen, to all civilized society and all free Government.) Sir, there are few situa-

tions in life where friendships so strong and so lasting are formed, as in that very relation. The slave knows that he is bound, indissolubly, to his master, and must from necessity, remain always under his controul. The master knows that he is bound to maintain and provide for his slave so long as he retains him in his possession. And each party accommodates himself to his situation. I have seen the dissolution of many friendships, such, at least, as were so called; but I have seen that of master and slave endure so long as there remained a drop of the blood of the master to which the slave could cleave. Where is the necessity of this provision in the Constitution? Where is the use of it? Sir, what are we about? Have we not been undoing what the wiser heads—I must be permitted to say so—yes, Sir, what the wiser heads of our ancestors did more than half a century ago? Can any one believe that we, by any amendments of ours—by any of our scribbling on that parchment—by any amulet—any legerdemain—charm—abracadabra—of ours, can prevent our sons from doing the same thing? that is, from doing as they please, just as we are doing as we please? It is impossible. Who can bind posterity? When I hear gentlemen talk of making a Constitution “for all time”—and introducing provisions into it, “for all time”—and yet see men here, that are older than the Constitution we are about to destroy—(I am older myself than the present Constitution—it was established when I was a boy)—it reminds me of the truces and the peaces in Europe. They always begin, “In the name of the most holy and undivided Trinity,” and go on to declare, “there shall be perfect and perpetual peace and unity between the subjects of such and such potentates, for all time to come”—and, in less than seven years, they are at war again.

Sir, I am not a prophet or a seer; but I will venture to predict, that your new Constitution, if it shall be adopted—does not last twenty years. And so confident am I in this opinion, that if it were a proper subject for betting, and I was a sporting character, I believe I would take ten against it.

It would seem as if we were endeavouring—(God forbid that I should insinuate, that such was the intention of any here)—as if we were endeavouring to corrupt the people at the fountain head. Sir, the great opprobrium of popular Government, is its *instability*. It was this which made the people of our Anglo-Saxon stock cling with such pertinacity to an independent Judiciary, as the only means they could find to resist this vice of popular Governments. By such a provision as this, we are now inviting, and in a manner prompting the people, to be dissatisfied with their Government. Sir, there is no need of this. Dissatisfaction will come, soon enough. I foretell now, and with a confidence surpassed by none I ever felt on any occasion, that those who have been the most anxious to destroy the Constitution of Virginia, and to substitute in its place this *thing*, will not be more dissatisfied now with the result of our labours, than this new Constitution will very shortly be opposed by all the people of the State. I speak not at random. I have high authority for what I say now in my eye. Though it was said that the people called for a new state of things, yet the gentleman from Brooke himself (Mr. Doddridge) who came into the Legislative Committee armed with an axe to lay at the root of the tree, told the Convention that he would sooner go home and live under the old Constitution than adopt some of the provisions which have received the sanction of this body. But I am wandering from the point.

Sir, I see no wisdom in making this provision for future changes. You must give Governments time to operate on the people, and give the people time to become gradually assimilated to their institutions. Almost any thing is better than this state of perpetual uncertainty. A people may have the best form of Government that the wit of man ever devised; and yet, from its uncertainty alone, may, in effect, live under the worst Government in the world. Sir, how often must I repeat, that *change* is not *reform*. I am willing that this new Constitution shall stand as long as it is possible for it to stand, and that, believe me, is a very short time. Sir, it is vain to deny it. They may say what they please about the old Constitution—the defect is not there. It is not in the form of the old edifice, neither in the design nor the elevation: it is in the *material*—it is in the people of Virginia. To my knowledge that people are changed from what they have been. The four hundred men who went out to David were *in debt*. The partizans of Cæsar were *in debt*. The fellow-labourers of Cataline were *in debt*. And I defy you to shew me a desperately indebted people any where, who can bear a regular sober Government. I throw the challenge to all who hear me. I say that the character of the good old Virginia planter—the man who owned from five to twenty slaves, or less, who lived by hard work, and who paid his debts, is passed away. A new order of things is come. The period has arrived of living by one’s wits—of living by contracting debts that one cannot pay—and above all, of living by office-hunting. Sir, what do we see? Bankrupts—branded bankrupts—giving great dinners—sending their children to the most expensive schools—giving grand parties—and just as well received as any body in society. I say, that in such a state

of things, the old Constitution was too good for them, they could not bear it. No, Sir, they could not bear a freehold suffrage and a property representation. I have always endeavoured to do the people justice—but I will not flatter them—I will not pander to their appetite for change. I will do nothing to provide for change. I will not agree to any rule of future apportionment, or to any provision for future changes called amendments to the Constitution. They who love change—who delight in public confusion—who wish to feed the cauldron and make it bubble—may vote if they please for future changes. But by what spell—by what formula are you going to bind the people to all future time? *Quis custodiet custodes?* The days of Lycurgus are gone by, when he could swear the people not to alter the Constitution until he should return—*animo non revertendi*. You may make what entries upon parchment you please. Give me a Constitution that will last for half a century—that is all I wish for. No Constitution that you can make will last the one-half of half a century. Sir, I will stake any thing short of my salvation, that those who are malcontent now will be more malcontent three years hence than they are at this day. I have no favour for this Constitution. I shall vote against its adoption, and I shall advise all the people of my district to set their faces—aye—and their shoulders against it. But if we are to have it—let us not have it with its death warrant in its very face: with the *facies hypocratica*—the Sardonic grin of death upon its countenance.

The question was now taken and decided by ayes and noes as follows:

Ayes—Messrs. Smith, Miller, Baxter, Mercer, Fitzhugh, Mason of Frederick, Naylor, Donaldson, Boyd, M'Millan, Campbell of Washington, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes, Bayly and Upshur—25.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Tyler, Nicholas, Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Henderson, Osborne, Cooke, Griggs, Pendleton, George, Byars, Roane, Taylor of Caroline, Morris, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter and Perrin—68.

So the resolution was rejected, and the Convention determined that the new Constitution should contain in itself no provision for future amendments.

The fifth having been indefinitely postponed,

The second and third resolutions were also read,

And on motion of Mr. Taylor of Chesterfield, were laid on the table.

The fourth resolution was then agreed to as follows:

Resolved, That the freedom of speech, and of the press, ought to be held sacred, and guaranteed by the Constitution."

The sixth was laid on the table, being superceded by one of like character already adopted.

Mr. Doddridge now observed, that *the labours of the Convention thus far completed*, he should offer a resolution authorising the Select Committee to have printed under the direction of the President all the resolutions which had been adopted by the Convention.

This resolution was agreed to.

On motion of Mr. Doddridge, it was agreed by the casting vote of the President, that when the House adjourns, it will adjourn to meet on Saturday next at 11 o'clock.

Mr. Mason of Southampton, moved the following:

Resolved, That the Select Committee, raised to prepare and report a new Constitution, or amendments to the existing one, &c. be instructed to report an apportionment of the representation in the Senate and House of Delegates, amongst the several counties, boroughs, and election districts of the Commonwealth, conformably to the resolutions to them referred."

A desultory conversation arose on this motion, in which Messrs. Mason, Henderson, M'Coy, Gordon, Brodnax, Stanard, Marshall, Naylor and Claiborne took part, and which terminated in the adoption of the resolution.

The House then adjourned to Saturday, 11 o'clock.

SATURDAY, JANUARY 2, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Douglass of the Presbyterian Church.

The President, conceiving that nothing of importance was likely to be done until the Committee should report, forbore to call the House to order: but the members having waited for a considerable time,

Mr. Summers suggested, that the Select Committee had not probably made up their report, and that it would scarcely be necessary to wait for them. But he enquired, whether it would not be proper to make an order for that report to be printed as soon as it was prepared.

On putting the question for printing, it was agreed to without opposition.

Mr. Canpbell of Brooke suggested also, whether the door-keepers had not better carry around to the members the report as soon as it was printed—and the Chair replied, that that would be a matter of course.

The Convention then adjourned.

MONDAY, JANUARY 4, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Courtney of the Methodist Church.

Mr. Madison, from the Select Committee, made the following report:

The Select Committee, to whom the several resolutions of the Convention were referred, with instructions to prepare and report either a new Constitution, or amendments to the existing Constitution, and to report an apportionment of the representation in the Senate and House of Delegates, among the several counties, cities, boroughs and districts of the Commonwealth, conformably with the resolutions to them referred, respectfully report the following form of an amended Constitution:

Whereas the Delegates and Representatives of the good people of Virginia, in Convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-six: Reciting and declaring, that whereas, George the third, King of Great Britain and Ireland, and Elector of Hanover, before that time entrusted with the exercise of the kingly office in the Government of Virginia, had endeavoured to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefitted by them would relinquish the inestimable right of representation in the Legislature; by dissolving Legislative Assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavouring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superiour to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for transporting us beyond seas to be tried for pretended offences, for suspending our own Legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrections of our fellow subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us, those very negroes, whom by an inhuman use of his negative he had refused us permission to exclude by law; by endeavouring to bring on the inhabitants of our frontiers, the merciless indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions of existence; by transporting a large army of foreign mercenaries, to complete the work of death, desolation and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of Government, and declaring us out of his allegiance and protection: by which several acts of misrule, the Government of this country, as before exercised under the Crown of Great Britain, was totally dissolved: Did, therefore, having maturely con-

sidered the premises, and viewing with great concern the deplorable condition, to which this once happy country would be reduced, unless some regular adequate mode of civil polity should be speedily adopted, and in compliance with the recommendation of the General Congress, ordain and declare a form of Government of Virginia :

And whereas the General Assembly of Virginia, by an act passed on the tenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, entitled, an act to organize a Convention, did authorise and provide for the election, by the people, of Delegates and Representatives, to meet and assemble, in General Convention, at the Capitol in the City of Richmond, on the first Monday of October in the year last aforesaid, to consider, discuss and propose, a new Constitution, or alterations and amendments of the existing Constitution of this Commonwealth, to be submitted to the people, and to be by them ratified or rejected :

We, therefore, the Delegates and Representatives of the good people of Virginia, elected and in Convention assembled, in pursuance of the said act of Assembly, do submit and propose to the people the following amended Constitution and Form of Government for this Commonwealth, that is to say :

I. The Legislative, Executive and Judiciary Departments, shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others ; nor shall any person exercise the powers of more than one of them at the same time, except that the Justices of the County Courts shall be eligible to either House of Assembly.

II. The Legislature shall be formed of two distinct branches, which together shall be a complete Legislature, and shall be called the General Assembly of Virginia.

III. One of these shall be called the House of Delegates, and shall consist of one hundred and twenty-seven members, to be chosen annually, for and by the several counties, cities, towns and boroughs of the Commonwealth ; whereof twenty-nine Delegates shall be chosen for and by the twenty-six counties lying West of the Alleghany mountains ; twenty-four for and by the fourteen counties lying between the Alleghany and Blue Ridge of mountains ; forty for and by the twenty-nine counties lying East of the Blue Ridge and above tide-water ; and thirty-four for and by the counties, cities, towns and boroughs, lying upon tide-water, that is to say : Of the twenty-six counties lying West of the Alleghany, the counties of Harrison, Ohio and Washington, shall each elect two Delegates ; and the counties of Brooke, Cabell, Grayson, Greenbrier, Giles, Kanawha, Lee, Lewis, Logan, Mason, Monongalia, Monroe, Montgomery, Nicholas, Pocahontas, Preston, Randolph, Russell, Scott, Tazewell, Tyler, Wood and Wythe, shall each elect one Delegate. Of the fourteen counties lying between the Alleghany and Blue Ridge of mountains, the counties of Frederick and Shenandoah shall each elect three Delegates ; the counties of Augusta, Botetourt, Hampshire, Jefferson, Rockingham and Rockbridge, shall each elect two Delegates ; the counties of Berkeley and Morgan shall together elect two Delegates ; and the counties of Alleghany, Bath, Hardy and Pendleton, shall each elect one Delegate. Of the twenty-nine counties lying East of the Blue Ridge of mountains and above tide-water, the county of Loudoun shall elect three Delegates ; the counties of Albemarle, Bedford, Buckingham, Campbell, Culpeper, Fauquier, Halifax, Mecklenburg and Pittsylvania, shall each elect two Delegates ; and the counties of Amelia, Amherst, Brunswick, Charlotte, Cumberland, Dinwiddie, Fluvanna, Franklin, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Orange, Patrick, Powhatan and Prince Edward, shall each elect one Delegate. And of the counties, cities, towns and boroughs, lying on tide-water, the counties of Accomack and Norfolk shall each elect two Delegates ; the counties of Caroline, Chesterfield, Essex, Fairfax, Greensville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, Nansemond, New Kent, Northumberland, Northampton, Princess Anne, Prince William, Southampton, Spottsylvania, Stafford and Sussex, and the city of Richmond, the borough of Norfolk, and the town of Petersburg, shall each elect one Delegate ; the counties of Lancaster and Richmond shall together elect one Delegate ; the counties of Westmoreland and King George shall together elect one Delegate ; the counties of Matthews and Middlesex shall together elect one Delegate ; the counties of Elizabeth City, Warwick and York, shall together elect one Delegate ; the counties of James City and Charles City, and the city of Williamsburg, shall together elect one Delegate ; and the counties of Prince George and Surry shall together elect one Delegate.

IV. The other House of the General Assembly shall be called the Senate, and shall consist of thirty-two members, of whom thirteen shall be chosen for and by the counties lying West of the Blue Ridge of mountains, and nineteen for and by the counties, cities, towns and boroughs, lying East thereof ; and for the election of whom, the counties, cities, towns and boroughs, shall be divided into thirty-two districts, as herein after provided. Each county of the respective districts, at the time of the first election of its Delegate or Delegates under this Constitution, shall vote for one Senator ; and the sheriffs or other officers holding the election for each county, city,

town or borough, within five days at farthest after the last county, city, town or borough election in the district, shall meet at some convenient place, and from the polls so taken in their respective counties, cities, towns or boroughs, return as a Senator the person who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the first general election, the eight members elected by the first division shall be displaced, and the vacancies thereby occasioned, supplied from such class or division by new election in the manner aforesaid. This rotation shall be applied to each division according to its number, and continued in due order annually. And for the election of Senators, the counties of Brooke, Ohio and Tyler, shall form one district: the counties of Monongalia, Preston and Randolph, shall form another district: the counties of Harrison, Lewis and Wood, shall form another district: the counties of Kanawha, Mason, Cabell, Logan and Nicholas, shall form another district: the counties of Greenbrier, Monroe, Giles, Pocahontas and Alleghany, shall form another district: the counties of Wythe, Grayson and Tazewell, shall form another district: the counties of Washington, Russell, Scott and Lee, shall form another district: the counties of Berkeley, Morgan and Hampshire, shall form another district: the counties of Jefferson and Frederick shall form another district: the county of Shenandoah shall form another district: the counties of Rockingham, Hardy and Pendleton, shall form another district: the counties of Augusta, Bath and Rockbridge, shall form another district: the counties of Botetourt and Montgomery shall form another district: the counties of Loudoun and Fairfax shall form another district: the counties of Fauquier and Prince William shall form another district: the counties of Stafford, King George, Westmoreland, Richmond, Lancaster and Northumberland, shall form another district: the counties of Culpeper, Madison and Orange, shall form another district: the counties of Albemarle, Nelson and Amherst, shall form another district: the counties of Fluvanna, Goochland, Louisa and Hanover, shall form another district: the counties of Spottsylvania, Caroline and Essex, shall form another district: the counties of King & Queen, King William, Gloucester, Matthews and Middlesex, shall form another district: the counties of Accomack, Northampton, Elizabeth City, York and Warwick, and the city of Williamsburg, shall form another district: the counties of Charles City, James City, New Kent and Henrico, and the city of Richmond, shall form another district: the counties of Bedford, Franklin and Patrick, shall form another district: the counties of Campbell, Henry and Pittsylvania, shall form another district: the counties of Halifax and Mecklenburg shall form another district: the counties of Charlotte, Lunenburg, Nottoway and Prince Edward, shall form another district: the counties of Buckingham, Cumberland and Powhatan, shall form another district: the counties of Amelia, Chesterfield and Dinwiddie, shall form another district: the counties of Brunswick, Greensville, Southampton and Sussex, shall form another district: the town of Petersburg, and the counties of Prince George, Surry and Isle of Wight, shall form another district: and the counties of Nansemond, Norfolk and Princess Anne, and the borough of Norfolk, shall form another district.

V. Any person may be elected a Senator, who shall have attained to the age of thirty years, and shall be actually a resident and freeholder within the district, or duly qualified to vote for members of the General Assembly, according to this Constitution. And any person may be elected a member of the House of Delegates, who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, or duly qualified to vote for members of the General Assembly, according to this Constitution: Provided, that all Ministers of the Gospel, and Priests of every denomination, shall be incapable of being elected members of either House of Assembly.

VI. The General Assembly shall meet once or oftener every year. Either House may adjourn itself respectively. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide. And each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies.

VII. All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates, except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.

VIII. The members of the Assembly shall receive for their services a compensation to be ascertained by law, and paid out of the public Treasury; but no law increasing the compensation of the members, shall take effect until the end of the next annual session after such law shall have been enacted. And no Senator or Delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under the Commonwealth, which shall have been created, or the emoluments of which

shall have been increased, during such term, except such offices as may be filled by elections by the people.

IX. The Governor, the Judges of the Court of Appeals and Superior Courts, and all others offending against the State, either by mal-administration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the House of Delegates; such impeachment to be prosecuted before the Senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the Senate shall be on oath or affirmation: and no person shall be convicted without the concurrence of two-thirds of all the members of the Senate. Judgment in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the Commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

X. The Legislature shall not pass any bill of attainder; or any *ex post facto* law; or any law impairing the obligation of contracts; or any law, whereby private property shall be taken for public uses, without just compensation; or any law abridging the freedom of Speech, or of the Press. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; nor establish by law any subordination or preference between different sects or denominations; nor confer any peculiar privileges or advantages on any one sect or denomination over others; nor pass any law requiring or authorising any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

XI. The Legislature may provide by law that no person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, Legislative, Executive or Judicial, under the Government of this Commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

XII. Every white male citizen of the Commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the Right of Suffrage according to the former Constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the value of fifty dollars, and so assessed to be if any assessment thereof be required by law; (each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage-settlement, having been so possessed or entitled for six months); and every such citizen, who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every such citizen, who for twelve months next preceding has been a house-keeper and head of a family within the county, city, town, borough or election district where he may offer to vote, and shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the General Assembly in the county, city, town or borough, respectively, wherein such land shall lie, or such house-keeper and head of a family shall live. And in case of two or more tenants in common, joint tenants or parceners, in possession, reversion or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to; and the Legislature shall by law provide the mode in which their vote or votes shall in such case be given: *Provided, nevertheless*, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier,

seaman or marine, in the service of the United States, or by any person convicted of any infamous offence.

XIII. In all elections in this Commonwealth, to any office or place of trust, honor or profit, the votes shall be given openly, or *viva voce*, and not by ballot.

XIV. The Chief Executive power of this Commonwealth, shall be vested in a Governor. He shall hold his office, during the term of three years, to commence on the first day of January next succeeding his election, or on such other day, as may from time to time, be prescribed by law; and he shall be ineligible to that office, for three years next after his term of service shall have expired. He shall be elected as follows: At the first election for members of the House of Delegates, to be held under this Constitution, and every third year thereafter, at the times and places of holding such elections, in the several counties and corporate towns of this Commonwealth, the persons qualified to vote for members of the General Assembly shall vote also for a Governor. A poll of the votes so given in each election district shall be duly kept, authenticated, certified, and laid before the General Assembly, at their next annual meeting, in such manner as shall be prescribed by law. These polls shall be examined by a joint committee of both Houses—the number of votes given for each person as Governor, ascertained, and the result declared by resolution of the General Assembly. The person having the greatest number of votes, if that be a majority of the whole number given, and if he be eligible to the office, shall be declared duly elected Governor. If no such person have a majority of the whole number of votes given, then it shall be declared that no election hath been made; and the General Assembly shall proceed, by joint vote of both Houses, to elect a Governor, from those, how many soever there may be, who being eligible, shall have the two highest numbers on the polls.

XV. No person shall be eligible to the office of Governor, unless he shall have attained the age of thirty years, shall be a native citizen of the United States, and shall have been a citizen of this Commonwealth for five years next preceding his election.

XVI. The Governor shall receive for his services a compensation to be fixed by law, which shall be neither increased nor diminished, during his continuance in office.

XVII. He shall take care that the laws be faithfully executed; shall communicate to the Legislature, at every session, the condition of the Commonwealth, and recommend to their consideration such measures as he may deem expedient. He shall be Commander-in-chief of the land and naval forces of the State. He shall have power to embody the militia, when in his opinion, the public safety shall require it; to convene the Legislature, on application of a majority of the members of the House of Delegates, or when, in his opinion, the interest of the Commonwealth may require it; to grant reprieves and pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; to conduct, either in person, or in such manner as shall be prescribed by law, all intercourse with other and foreign States; and during the recess of the Legislature, to fill, *pro tempore*, all vacancies in those offices, which it may be the duty of the Legislature to fill permanently: *Provided*, That his appointments to such vacancies shall be by commissions to expire at the end of the next succeeding session of the General Assembly.

XVIII. Commissions and grants shall run in the name of the Commonwealth of Virginia, and bear test by the Governor, with the seal of the Commonwealth annexed.

XIX. The General Assembly shall provide by law, for the discharge of the Executive duties, in all cases of the temporary inability of the Governor to discharge them, and of vacancy in his office, by reason of his absence from the seat of Government, sickness, death, removal from office, resignation, or other cause.

XX. The manner of appointing militia officers shall be provided for by law; but no officer below the rank of a Brigadier General, shall be appointed by the General Assembly.

XXI. A Treasurer shall be appointed annually by joint vote of both Houses.

XXII. The Judicial power shall be vested in a Supreme Court of Appeals, in such Superior Courts as the Legislature may from time to time ordain and establish, in the County Courts, and in justices of the peace. The Legislature may also vest such jurisdiction as shall be deemed necessary in Corporation Courts, and in the magistrates who may belong to the corporate body. The jurisdiction of these tribunals shall be regulated by law. The Judges of the Supreme Court of Appeals and of the Superior Courts shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof by either of them shall vacate his Judicial office.

XXIII. The present Judges of the Supreme Court of Appeals, of the General Court, and of the Superior Courts of Chancery, shall remain in office until the termination of the session of the first Legislature elected under this Constitution, and no longer.

XXIV. The Judges of the Supreme Court of Appeals and of the Superior Courts shall be elected by the joint vote of both Houses of the General Assembly.

XXV. The Judges of the Supreme Court of Appeals and of the Superior Courts shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

XXVI. On the creation of any new county, justices of the peace shall be appointed, in the first instance, in such manner as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase their number, appointments shall be made by the Governor, on the recommendation of their respective County Courts.

XXVII. The Clerks of the several Courts, when vacancies shall occur, shall be appointed by their respective Courts, and the tenure of office, as well of those now in office as of those who may be hereafter appointed, shall be prescribed by law.

XXVIII. Judges may be removed from office by a concurrent vote of both Houses of the General Assembly; but two-thirds of the whole number elected to each House must concur in such vote, and the cause of removal shall be entered on the journals of each. The Judge against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon.

XXIX. Writs shall run in the name of the Commonwealth of Virginia, and bear test by the Clerks of the several Courts. Indictments shall conclude Against the peace and dignity of the Commonwealth.

XXX. The Executive Department of the Government shall remain as at present organized, and the Governor and Privy Councillors shall continue in office, until a Governor elected, under this Constitution, shall come into office; and all other persons in office when this Constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office, till successors shall be appointed, or the law shall otherwise provide; and all the Courts of Justice now existing shall continue with their present jurisdiction, until and except so far as, the Judicial system may or shall be hereafter otherwise organized by the Legislature.

XXXI. The Declaration of Rights made on the 12th June, 1776, by the representatives of the good people of Virginia assembled in full and free Convention, which pertained to them and their posterity, as the basis and foundation of Government, requiring in the opinion of this Convention no amendment, shall be prefixed to this Constitution, and have the same relation thereto as it had to the former Constitution of this Commonwealth.

The report having been read at the Clerk's table, the Chair announced to the Convention that it was open to amendment.

Mr. Fitzhugh enquired, whether this form of a Constitution was to be considered and treated as an amendment to the amendments agreed upon before, or a substantive proposition, now presented for the first time?

The Chair replied, that it was to be considered in the latter point of view, the whole being presented as one substantive proposition, submitted for the action of the body.

Mr. Fitzhugh then further enquired, whether a question was to be taken separately on each article?

The Chair replied in the negative: it would be treated much as a bill was when it had received its first and second reading, it would be open to amendments, and when all the amendments had been agreed upon, the general question would then be put on engrossing the report as amended, for a third reading. The Chair did not consider itself bound to require the form of a first and second reading and commitment, as was usual with bills.

Mr. Johnson thought differently, and that it ought to go through the same stages as a bill.

The Chair replied that such had not been the course in other Conventions: In Massachusetts, they established it as one of their rules at the commencement of the session, that every resolution proposing an alteration in the Constitution, should be read on two several days, before it was finally acted upon: when the committee appointed to reduce the Constitution to form, made their report, they presented it in the form of fourteen articles; and the Convention by an order which they made, declared that the question should be put on each article thus: "Shall this article of amendment, be proposed to the people of this Commonwealth, for their ratification and adoption?" The Chair said, that after the engrossment, he would have presented the final question in this form: "Shall this Constitution be submitted to the people of the Commonwealth, for their ratification and adoption?" And when all the amendments had been agreed upon, the question would then be put upon engrossing the Constitution as amended.

A desultory debate now ensued on the proper course to be pursued in respect to the report. It was read a second time by its title—and a motion being then made to

commit it to a Committee of the Whole, it was negatived. The debate was then resumed: and after some time, the vote just passed was re-considered, and the report was committed to a Committee of the Whole House, and made the order of the day to-morrow. Some parts of it having been added by the Committee in MS. since the printing of the report, the whole was ordered to be re-printed and sent to the members this evening.

The House then adjourned.

TUESDAY, JANUARY 5, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Courtney of the Methodist Church.

Pursuant to the order of yesterday, the House went immediately into Committee of the Whole, Mr. Stanard in the Chair.

The draft of the new Constitution reported by the Select Committee, was then taken up and read section by section for amendment.

To the first three sections no amendment was offered.

The third having been read (which apportions the representation in the House of Delegates, among the election districts,)

Mr. Naylor complained of the arrangement, particularly as to its bearing on the county of Berkeley—and contended that Shenandoah had more than was its due, when the population of the two counties was compared: and moved that one Delegate be taken from Shenandoah and given to Berkeley.

Mr. Boyd, after some general remarks as to the duty of equalizing the representation so far as was consistent with preserving the existing county lines, went into an examination of the distribution of the twenty-four representatives assigned to the Valley among its fourteen counties. He pointed out the three interests into which the Valley was divided, as the James River interest, the Shenandoah interest, and the Potomac interest. He complained that Shenandoah should have three Delegates and a Senator, and thought two Delegates was all that county could justly claim. He went into a number of statistical details which we cannot embody in the general sketch of the outlines of the debate, which our limits prescribe to us.

Mr. Cooke suggested to both the gentlemen that they had better defer their amendment for the present, as another motion would shortly be made for so enlarging the number of the House of Delegates as to enable the Select Committee to make a more just and satisfactory distribution of the representation, while the same general proportion as at present, was prescribed among the four great divisions of the State.

They thereupon consented to withdraw the motion for the present.

Mr. Claiborne suggested it as very desirable that if such a motion should be made, it should be done with as little delay as possible.

Mr. Cooke then said, that in examining the details on the general subject, it had some time since occurred to him, that many practical difficulties and complaints might be obviated, by taking a larger number than one hundred and twenty-seven for the House of Delegates: he believed that one hundred and forty would be a number much more easily apportioned among the counties, in the same ratio as was already agreed upon. That would give thirty-two to the trans-Alleghany country; twenty-seven to the Valley; forty-three to the middle country, and thirty-eight to the district on tide-water. Mr. C. briefly shewed how this plan would affect the respective divisions of the State. To try the sense of the Committee, he moved to strike out one hundred and twenty-seven, and insert one hundred and forty.

Mr. Leigh stated the very great difficulties which Mr. Tazewell and himself had experienced in apportioning the thirty-four Delegates assigned to the lower country; (which was their task in the Committee :) agreed with Mr. Cooke, that a larger number would be much more readily apportioned, but expressed his wish that the number should not be fixed, farther than to assign a maximum, say one hundred and fifty, beyond which it should not go. Possibly one hundred and forty might prove very convenient: but he thought it best to leave the Committee some discretion. He concluded by asking a division of the question on striking out and inserting.

It was so divided accordingly, and being put first on striking out,

Mr. Tyler expressed his cordial approbation of the suggestion of Mr. Leigh. He disclaimed all idea of stickling for a larger representation for his own district—on the plan of a House of one hundred and twenty-seven, it had had perfect and entire justice done to it: but should the larger number prevail, an arrangement might be made which would bind the people of that district as one man to the adoption of the new Constitution. They had, though with great reluctance, given up a county representation as impracticable: but the plan he spoke of would meet all their wishes.

The question being put on striking out the number one hundred and twenty-seven, it was carried : Ayes 54.

Mr. Leigh proposed that the third section be passed by for the present, stating it to be his purpose afterward to offer a resolution expressive of the view he had submitted.

Mr. Cooke thereupon withdrew his motion to insert one hundred and forty.

On motion of Mr. Goode, the fourth section also was passed by.

The fifth section having been read as follows :

“ V. Any person may be elected a Senator who shall have attained the age of thirty years, and shall be actually a resident and freeholder within the district, or duly qualified to vote for members of the General Assembly according to this Constitution. And any person may be elected a member of the House of Delegates, who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, or duly qualified to vote for members of the General Assembly according to this Constitution. Provided, that all Ministers of the Gospel and Priests of every denomination, shall be incapable of being elected members of either House of Assembly.”

It was, on motion of Mr. Leigh, amended, by striking out the words “ or duly ” before “ qualified to vote : ” so as to make that part of the section read, “ any person may be elected a Senator who shall have attained the age of thirty years, and shall be actually a resident and freeholder within the district, *qualified to vote* for members of the General Assembly.”

The same amendment was made in the latter part of the same section, so as to cause it to read, “ any person may be elected a member of the House of Delegates who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, borough or election district, *qualified to vote* for members of the General Assembly.”

The sixth section was then read as follows :

“ VI. The General Assembly shall meet once or oftener every year. Either House may adjourn itself respectively. A majority of each House shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and be authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide. And each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies.”

On motion of Mr. Leigh, the word “ respectively,” in the second sentence, was stricken out as superfluous.

Mr. Chapman moved further to amend the section by striking out the words, “ Either House may adjourn itself,” and to insert in lieu thereof, “ Neither House, during the session of the Legislature shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.”

In supporting the amendment, Mr. Chapman said, that his object was to prevent one House from adjourning (as at present) for two or three weeks while the other House was sitting. It might be convenient for Senators who lived near the city to go home to their families, but they could be much more profitably employed in attending the debates of the House of Delegates during their leisure time. He had himself done so : and at the close of the recess he was already well acquainted with the nature of the business on which the Senate had to act, while to those who had been absent all was new and strange.

The clause allowed the Senate to adjourn when it pleased ; and this might happen just when an important election was coming on. He could not see why one House was not as much bound to sit and do the public business as the other : both were alike servants of the people. In other State Constitutions there was a provision of this kind, as also in that of the United States. The Senate might adjourn to a different part of the State from the Lower House, and at a different season. He thought they ought to be together, and the one not to adjourn without the other.

Mr. Leigh said, that the clause proposed to be stricken out, was a provision copied from the old Constitution. There was not a single instance to be pointed out, where there had been any want of good correspondence between the two Houses ; nor was there likely to be, unless some very important case should occur, where one House might suppose the other to be pressing, with undue eagerness, some great measure, which ought first to be understood and pronounced upon by the people. In all Constitutions of Government where there was a Legislature, some provision was made for proroguing their session. Before the revolution, this power had resided in the King, and his representative, the Governor ; but, at the revolution, that power was taken away from the Executive ; and this was one of the most important changes in our form of Government. But, as the power of prorogation was a very important one, it ought to be preserved somewhere ; in one or other House of the Legislature. It had been found useful in practice, to repose it in each House, as it respected the other.

that was virtually the effect of the right of adjournment; and it had hitherto been found to occasion no inconvenience. Mr. L. said, he could readily conceive of circumstances, where its exercise might be all important to the peace, safety, and happiness of the community.

Mr. Nicholas said, he had long thought that some such provision ought to be adopted, as was now proposed by the gentleman from Giles. As to the power of prorogation, it was a power which had no application, except to the whole Legislature. The question was, whether one House should have the power of adjourning itself for a long time, without the consent of the other? If this was prorogation, the Senate was in the habit of proroguing itself every session. Mr. N. contended, that this practice led to a loss of time—the one House would not exert itself, if the other was absent: or if it did, the other, on its return, found its table groaning under an accumulation of business. In times of faction, one House might defeat a measure which was matured in the other, by adjourning indefinitely. Both should be kept at their post.

Mr. Leigh said, the gentleman could not fail to perceive, that it was as much in the power of the Senate to defeat an obnoxious measure, by a direct vote, as by an adjournment; but the question was, whether they should be allowed to defeat such a measure, by a direct vote, or whether, by virtually proroguing them, the other House should give time for the question to be brought before the people. Mr. L. argued to shew, that the public business would not be advanced, by compelling the Senate to remain in session, when they had nothing to do. Being only a revisory body, they could at any time overtake the Lower House. No injury had resulted from the occasional adjournments of the Senate, in the early part of the session. The gentleman had said, that the power of prorogation applied only to the Legislature as a whole. But the Legislature, as a whole, consisted of two bodies; and when one of those had adjourned, the Legislature as a whole was no longer in session; but was virtually prorogued by such adjournment. Cases might occur, when such a power would be useful and important.

Suppose the House of Delegates should be seized with the idea that it was expedient to create a little army, or a captain's company of Judges: and should pass a bill for that purpose, and send it up to the Senate. No doubt if such were the will of the people, it must be done—the people must always do, and did in fact do, whatever they pleased. But before the bill should pass the Senate, suppose the Senate should adjourn over to the ensuing session. By that means the voice of the people would have an opportunity of being heard. He had no idea they would ever be guilty of such folly: but he had merely put a case to shew the operation of the clause proposed to be stricken out. Again—Suppose the Senate to be sitting to try an impeachment brought by the House of Delegates, prosecuted by its agents. What necessity was there that it should continue to sit in its Legislative capacity? Might it not adjourn as a Legislature, and continue its sittings as a Judicature? But should the amendment prevail, this would be prevented.

Mr. Nicholas said, that in such a case the House of Delegates would not refuse consent, and with that consent, the Senate might adjourn, according to the amendment, at any time. If he could subscribe to the opinion that a power to adjourn in one House, was a power to prorogue the other, he was sure the Convention would never assent to any such measure. But no such power was involved; and the public business would be accelerated by the amendment.

Mr. Tazewell said, if it was true that we ought to consult past time if we would provide for the future, the House had on this subject evidence of the highest order. The clause proposed to be stricken out was in the old Constitution: this power of prorogation had existed in its present form for fifty-four years, without occasioning any practical evil, but on the contrary with good effect.

The Committee had proposed nothing new: the regulation already existed: why should it be changed? But farther. Additional power had now been given to the Senate to try impeachments. Who was to try them? The Senate: the Senate sitting as a Judicial body. But if this power to adjourn in one House separately from the other was taken away, then the House of Delegates, after all its Legislative business had been completed, must still continue in session so long as the Senate should sit to try the impeachment. But this was surely unnecessary. There could be no need of it so far as the impeachment was concerned, any more than there was for a grand jury to remain during trial in court. After it had instituted the prosecution, it might appoint a committee as its agents to conduct it—what need for the whole body to remain? There could be none. When their Legislative function was discharged, let them have the power to adjourn. Now, therefore, there was much more need than formerly of the clause: and it had done no harm for fifty-four years.

Mr. Chapman replied. He said, that admitting such to be the fact, it was reason sufficient to give up the clause that it might by possibility do harm; for it was the business of the Legislature to guard against the possibility of evil where it could be done. But he denied the fact to be so. He believed that serious evils had grown out

of it. Loud complaints were heard of the practice of the Senate to adjourn from the 1st December to 1st January. At this very time, if the Senate had not adjourned, Councillors and a Governor might have been chosen, and the elections would not have been postponed to the close of the session, when the Assembly was pressed with business. This was too often the case: whereas they ought to be conducted in the early part of the session when more leisure was enjoyed. Complaints were constantly heard as to the adjournments of the Senate; and he remembered one case, where the Lower House had been detained nearly a week waiting for the Senate. As to the objection about the House of Delegates being obliged to remain in session all the while the Senate was trying an impeachment, no such consequence resulted from the amendment. It allowed either House to adjourn with the consent of the other; and doubtless the Senate would not refuse its consent in such a case. In every act of the two bodies, the consent of both was required; why not in this? As the clause now stands, the Senate might adjourn for six months—and then meet at Charlottesville: there was nothing to prevent it.

Mr. Johnson said, that two evils were apprehended from the clause: one was that of temporary adjournments during the sitting of the other House; the other was that of permanent adjournment. He referred to his own experience for sixteen years in the Senate, and testified, that no evil to his knowledge had grown out of its temporary adjournment, when it had nothing in the world to do, until such time as it would probably have something that it could do. Whether those who, during this time, listened to the reading of petitions in the other House, or sat and beheld them laid on the table without reading—got more benefit than those who returned for a short time to their families, he would not undertake to say. It was true that complaints were made by those members who remained in the city: and by those Delegates who found their constituents dissatisfied with the very long sessions of the House of Delegates, and who endeavoured to throw off the blame on the adjournments of the Senate. The experiment had been tried, and what was the result? The Senate had sat nominally the whole session: but in reality they could not command a quorum, nor was there any necessity for a quorum during a considerable part of the time. He had never known an instance, after a temporary adjournment, where in ten days the Senate had not been able to master all the business before them, and again to be even with the other House and waiting for business.

As to permanent adjournment, no good could arise from denying that power. When either body was satisfied it had done all it ought to do, it was to no purpose to hold it together and send it business from the other; for, none could compel them to consent to the measures proposed. Both bodies were needed, in order to pass a law, and both should give their free consent to adjourn. This was the usual course, and the only proper one.

Mr. Coalter said, he was one of those who went for the effect of measures. It might happen that the Lower House would reject a bill by a bare majority when many were absent, and might then adjourn to prevent the re-consideration. He asked, if there could have been any necessity for the last fifteen years that the Legislature should sit from the 1st of December to the 1st of March? Though the Legislature was an electioneering body, and had the opportunity of going home and explaining to their constituents why they sat so long, yet he asked if those long sessions of the Legislature had not had full as much effect in producing the present Convention as the odious Judiciary? who were not an electioneering body, and could give no explanation to their constituents of the reasons why they kept causes so long on the docket. The House threw the responsibility on the Senate, the Senate on the House. One said, the Senate is away, we need not hurry ourselves; the Senate said, the House will do little or nothing till February. But the people, meanwhile, had found out that there was oppression; and that he took to be one of the principal reasons why they were now met in Convention. Mr. C. said he was for stripping them of this excuse—and should vote for the amendment of the gentleman from Giles.

Mr. Giles said he felt much doubt and embarrassment on this subject. He observed in the next section a provision which had a bearing on the present amendment: if that section should be altered as he thought it ought to be, then the amendment now proposed might be advantageous. [He then read the seventh section as follows:

“VII. All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates, except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.”]

He thought serious evil resulted from the adjournment of the Senate: and this was to be attributed to their not having the power to originate bills. Though greatly attached to the old Constitution, he thought in this feature it ought to be amended. Let the Senate have power to originate all bills but money bills. The power had been given to the Senate of the United States, and with advantage. If the Senate should

be clothed with this power, then it would become important that it should not adjourn without the consent of the other House.

The argument from the power of the Senate to try impeachments was in favour of the amendment, and not against it. The House of Delegates must be in being, in order to prosecute the impeachment before the other House. In the trial of Judge Chase this had never been questioned, and the utmost expedition was urged to bring that trial to an issue before the 1st of March, on that very ground. If they took from the Constitution of the United States the provision about trying impeachments, they ought to borrow likewise the clause now proposed. Mr. G. said he should vote for the amendment.

Mr. Randolph said, he should vote against the amendment, and that on a principle which he had learned before he came into public life; and by which he had been governed during the whole course of that life, that it was always unwise—yes—highly unwise, to disturb a thing that was at rest. This was a great cardinal principle that should govern all wise statesmen—never without the strongest necessity to disturb that which was at rest. He should vote against the amendment on another and an inferior consideration. Whatever opinion might have been expressed as to a multitude of counsellors, there was but one among considerate men as to a multiplicity of laws. The objection urged by the gentleman from Richmond, over the way, (Mr. Nicholas,) to the existing clause, was precisely one of the strongest motives with him for preferring the amendment. I am much opposed, said Mr. R., except in a great emergency—and then the Legislative machine is always sure to work with sufficient rapidity—the steam is then up—I am much opposed to this “dispatch of business.” The principles of free Government in this country, (and if they fail—if they should be cast away—here—they are lost forever, I fear, to the world,) have more to fear from over legislation than from any other cause. Yes, Sir—they have more to fear from armies of Legislators, and armies of Judges, than from any other, or from all other causes. Besides the great manufactory at Washington, we have twenty-four laboratories more at work, all making laws. In Virginia we have now two in operation—one engaged in ordinary legislation, and another *hammering* at the fundamental law. Among all these lawyers, Judges, and Legislators, there is a great oppression on the people, who are neither lawyers, Judges, nor Legislators, nor ever expect to be—an oppression barely more tolerable than any which is felt under the European Governments. Sir, I never can forget, that in the great and good book to which I look for all truth and all wisdom, the book of Kings succeeds the book of Judges.

Mr. Mercer, after a few words that could not be heard from the confusion in the House, was believed to say, that experience, if it was to be consulted at all, ought to be consulted on both sides of the question. He believed, that the clause which it was proposed to strike out, had never been used as a power of prorogation from the foundation of the Government. He would go farther—On inserting the clause, he believed such a notion never once entered into the conception of the framers of the Constitution. The power to adjourn was given in no part of the Constitution but this, (save in that clause where a certain number are declared to be a quorum to adjourn,) and it never had been used for the purpose of proroguing the Assembly, but only for the convenience of one of the branches of that body. Experience, therefore, was so far on the side of the friends of the amendment.

Should the House of Delegates be reduced to the number of one hundred and twenty-seven, greater dispatch of business might be hoped for. At all events, mere courtesy, if nothing else, required one House to notify the other of its intention to adjourn, when the adjournment was to be for several weeks, and to enquire whether there was any pressure of business, which would render such a step inconvenient. That would be, in practice, the whole result of the amendment. The Senate would make this enquiry, and the House of Delegates, unless there were strong reasons to the contrary, would always give its assent. The question had been argued, as if the one body would arbitrarily retain the other in session, when there was no good reason for doing so. But there were surely no grounds for such a presumption. As to the case of an army of Judges being created by the Lower House, the Senate needed no proroguing power to thwart such a plan—it had only to reject it by its vote—and then the measure could go to the people, and they could let their pleasure be known to their Delegates at the next session. Mr. M. concluded, by insisting that no evil had followed such a measure as was proposed by the amendment, though it had been tried by all the other States, and by the General Government; so that experience was for and not against it.

Mr. George, in reply to Mr. Johnson, referred to the session of 1817-18, when the House of Delegates had passed upwards of ninety revised bills during the recess of the Senate, of which that body, on its return, acted only on twenty—and the House had, in consequence, to take up the other seventy, and pass them again the next session. He had been for nine sessions in the House of Delegates, and not one had passed

without very serious complaints on the subject of the Senate's adjournment, and in one session, the House had to wait a week for the Senate.

Mr. Leigh said, he well remembered the period to which the gentleman alluded—and the Senate had never done a wiser thing, than to pass no more than twenty of those revised bills—and it would have done a yet wiser thing, if it had retained them still longer. In *two* sessions the Legislature had revised laws, which had been the work of *forty* sessions of the same body.

The question was now taken on the amendment, and decided in the affirmative—Ayes 50.

So the House resolved, that neither House should have the power of adjourning for more than three days, without the consent of the other.

Mr. Summers moved the following amendment :

“ But if vacancies shall occur by death or resignation, during the recess of the General Assembly, such writs may be issued by the Governor, under such regulations as may be prescribed by law.”

The amendment was briefly explained by the mover.

Mr. Tazewell and Mr. Randolph suggested cases in which some difficulty would arise, and considered the amendment as trenching on the privileges of the Houses to judge of the qualifications of their own members.

Mr. Summers replied, and denied any such consequence to be possible, because the Legislature was itself to prescribe whatever rules and limitations it might judge expedient to guard its own rights.

Mr. Scott moved to amend the amendment, by inserting after the word “ vacancies,” “ occurring by death or resignation ;” which was agreed to.

The amendment of Mr. Summers, as thus amended, was carried—Ayes 51.

Mr. Mercer moved the following :

“ Each House shall judge of the election, qualification and returns of its members, may punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same offence.”

The amendment was agreed to.

Mr. Mercer then moved the following :

“ Senators and Delegates shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same ; and for any speech or debate in either House, they shall not be questioned in any other place.”

Mr. Leigh opposed the amendment as unnecessary, parliamentary law being well established and understood.

The amendment was rejected.

Mr. Mercer offered the following :

“ Each House shall keep a Journal of its proceedings, and publish all such parts thereof as the public welfare may not require to be kept secret—and the ayes and noes on any question shall, at the request of one-tenth of the members present, be entered on the Journals.”

This also was rejected by the House.

The seventh section was then read as follows :

“ VII. All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates, except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.”

Mr. Mercer moved to amend it, by striking out the following : “ Except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected.”

The amendment was rejected—Ayes 35, Noes not counted.

Mr. Giles now moved farther to amend the section, so as to make it read, “ All money bills shall originate in the House of Delegates only, and in no instance shall be altered in the Senate, but wholly approved or rejected.”

Mr. P. P. Barbour said, that the effect of the amendment would be, to give to the Senate power to originate all bills, (except money bills,) equally with the House of Delegates. He was opposed to such a plan. He had had some little experience in another Legislature, where such a power was exercised ; and there, nothing was more common, than for the Senate and the House of Representatives, to be engaged, simultaneously, in acting on the same subject. The consequence of this, was, necessarily, a great waste of time. When a proposition had been offered in the House, and failed there, nothing was of more every-day occurrence, than merely to cross over to the Senate, and there try the same thing.

Mr. B. said he objected to the amendment on principle also. The object sought in separating the Legislature into two distinct bodies, was, that public measures might receive more mature reflection before they were finally resolved upon. The Senate was made less numerous than the other House : and if its duties were confined to

those of a revisory kind, then, in case, from any cause, (and the causes were various that might lead to such a result,) a measure threatening to the public interest should hastily be passed in the more numerous branch of the Legislature, the Senate having more leisure, more calmness, and hence, in general, more accuracy in its deliberations and decisions, would supply the means of checking such a result, and either correcting its injurious features, or preventing its passage. But if the Senate was to have the power of originating all measures, the same as the other House, its revisory character would be lost, and with it, a great benefit to the body politic. Both Houses might then be engaged at the same time upon the same object: and the Commonwealth would thus lose the entire benefit contemplated in dividing the Legislature into two branches—the benefit of greater deliberation and greater accuracy in the examination of all matters of legislation.

Mr. Giles said, that with great deference for the opinion of the President of this body, he had, from his own experience, drawn a directly opposite conclusion. It was true that in some instances, both Legislative bodies in the General Government were acting on the same subject at the same time; but the effect of this was to accelerate, not to retard the public business. His experience had been pretty equally divided between the Senate and the House of Representatives—he had, as Chairman of a Committee, originated many measures in both. In Virginia, such an arrangement would fill up the vacant time of the Senate, and would prevent delay, inconvenience and expense. As to any increased deliberation resulting from giving to one House the originating, and to the other the supervisory power, no such consequence resulted in practice. His experience on the subject led him to a conclusion precisely opposite.

He agreed with the gentleman from Charlotte, (Mr. Randolph,) that the country suffered under too much legislation. But this was not to be attributed to the fact that the Senate was not in session. It arose from our habits, it was occasioned by schemers—political schemers—for now-a-days all men in the nation were politicians, and as soon as they got into the Legislature, they considered it a duty to offer some scheme to that body: and whether offered late or early in the session, it must go through. The evil arose from Legislative schemers: and schemers of all kinds. In the House of Delegates there were usually a vast number of young lawyers, who thought in the course of their practice that they had discovered some inconvenience that ought to be remedied—and they insisted that the House should adopt their notions and carry them into the laws: thus their notions—their whims and blunders, were often reduced to law. He should rejoice with the gentleman from Charlotte, if this could be put down: But giving the Senate power to originate bills would not produce any such effects.

Mr. Randolph said, he was very happy to have the sanction of the opinion of the Chief Magistrate of the Commonwealth for any thing he said on that floor. But he would suggest to him, with much deference, whether the best way to lay the evil spirit which had so much vexed that gentleman as well as himself would be to introduce that spirit into the Senate?

He was afraid they should see the same game played between the two Houses here, which he had seen played between the two Houses elsewhere: if you will pass my bill, I will pass yours. With much deference he would suggest to the gentleman from Amelia, whether his amendment would not be likely to convert the Senate from being a grave and deliberative body into as heated an assembly as the other House: whether it would not tend to introduce party spirit into the Senate—where, so long as their duty was confined to revising and amending the bills sent up to them, it must *ceteris paribus* have less play?

It was an old adage—and all old adages were true—that the by-stander saw most of the game. He looked with a cool eye upon the play: but if they permitted the Senate to *cut in* and become participants in the game, one of the great functions of that body, if not totally destroyed, would be in a great degree impaired. Why was the Senate confined to so small a number? Because, as a revisory body, it needed not be more numerous. But, if it was to originate bills as the other House did, then it should, like that House, consist of the immediate representatives of the people. It was true, they were to be saved from having money bills originated in the Senate—and this was a most wise provision. He would never consent that a man should put his hand into his pocket who did not live in his county—a Senator—in a big county—out there—whom he neither knew nor cared for—and who very probably knew and cared still less about him. Such a man would know that his big county would return him again, let him tax *him*, (Mr. R.) as he might. No—none but a freeholder, and of his own county too, should ever molest him—or thrust his hand into his pocket. He submitted whether the amendment would not introduce this *pruritus leges ferendi*, of which the gentleman complained, into the Senate also.

The question was taken on Mr. Giles's amendment, and it was decided in the negative.

So the House refused to give the Senate the power of originating bills.

The eighth and ninth sections were then read.

Mr. Campbell of Bedford moved to amend the ninth section, by requiring three-fifths instead of two-thirds of the Senate to convict a Judge: but the amendment was rejected.

The tenth, eleventh and twelfth sections were then read.

In the twelfth section, Mr. Nicholas renewed the amendment (so often proposed and rejected.) of requiring a definite amount of tax to be paid by a housekeeper, in order to entitle him to the right of suffrage; but it was rejected—Ayes 36.

Mr. Coalter said, he was anxious to see a provision introduced for separate elections, and he moved the following:

“And provided, also, that there shall be no separate elections in any one county, but the Legislature may from time to time provide that the polls shall be kept open not exceeding three days, in such counties as shall be designated by law.”

Mr. C. briefly explained and supported the amendment. He said he was for having a Legislature that should be responsible to the people: but how a member could respond to the people in ten different places at the same time, he never could understand. Mr. C. cited the case of an individual who had voted for a tax, and against whom great prejudice was in consequence excited; but who had been saved from losing his place, by being able to explain his conduct to the whole collection of voters at once: if they had met in six or eight different places, he would infallibly have lost his election. Such an occasion was valuable, as being in politics a school-day for the people. He concluded by adverting to the value of character, and the necessity of responsibility.

Mr. Thompson said: He hoped the amendment of the gentleman from Stafford, (Judge Coalter,) would not prevail. It was to him matter of surprise as well as regret, that our system of separate elections had incurred the ban of that gentleman's displeasure: whatever objections might be made to it in theory, he would take upon himself to say, that the Legislature of Virginia had never adopted a wiser policy, than that of granting separate elections to all counties that petitioned for them. It was a policy, whatever might be said to the contrary, founded on the plainest principles of justice and expediency; and a policy that had been vindicated by experience. He was aware that in its commencement, doubts had been entertained of its expediency; the objections urged by the mover of the amendment had occurred to others, and Mr. T. acknowledged that he himself, had at one time, entertained doubts as to the propriety of authorising separate elections: those doubts, however, had long been dispelled, and he was now the most zealous advocate of the policy. It was right in principle, and in practice most beneficent. The Legislature had now become so thoroughly convinced of its expediency, that whenever a separate election was asked, it was granted. It had become a part of the fixed and settled policy of the State; a general separate election law had been enacted, and he believed the Legislature were prepared, if any one would take the trouble to move it, to pass a law, conferring upon the County Courts, the unlimited power of establishing as many precinct elections in their counties as they should from time to time deem necessary, prescribing for the government of these elections some general provisions.

Mr. T. asked, if in a Government of the people, a Government that rested upon public sentiment, it was not desirable and expedient to afford every facility for the expression of the popular will? And how could that will be so well and so effectually expressed as at the polls? As many voters should be brought to the polls as possible: it was the duty of every man to vote. Your Legislature had required that every man should vote, and had prescribed a penalty for the failure. Was it not therefore just, as well as politic, to bring the place of election as near to the home of the voter as possible? To many of them it was inconvenient, if not impossible, to attend an election at their courthouses. They could not spare the time to go so far—the money to pay expenses during their absence—they could not lose the services of a plough-horse at a busy season of the year for one or two days; and if they chanced to be without a horse (as some voters were) it would be hard to require them under a penalty to walk to their courthouses, perhaps twenty or thirty miles, (and in some counties more,) for the purpose of exercising their Right of Suffrage. It was convenient, it was right, it was expedient, (and what the voters had a right to require at the hands of the Legislature) to bring home the elections as nearly as possible, to their own homes, at least to their respective neighbourhoods.

Mr. T. said, it was with him no little recommendation to the system, that it was an approximation to the plan of ward elections, recommended to us by that great Apostle of human liberty, the illustrious Jefferson, whose wisdom and forecast he now more highly appreciated than ever.

The gentleman from Stafford, (Judge Coalter,) had objected to separate elections; that it deprived the representative of the opportunity of responding to all his constituents, of rendering an account of his stewardship, of vindicating his course, and the measures he had supported, and of answering charges, if any were preferred against

him. He had objected also, that they increased the power of demagogues, enabling them to wield the democracy of the country to their own purposes, to mislead the people, whose interests they would betray; and "last though not least," these separate elections in the opinion of the gentleman, had broken up, and would break up the schools of political wisdom, which the good people of the Commonwealth annually attended, when they all assembled at their Court-houses, to hear the speeches of their candidates for election or re-election. To support his first objection, the gentleman had referred to a single case, (the case of his friend from Augusta, which he, Mr. T. then heard for the first time) which he supposed had established the utility of a general assembly of the county to enable a representative to vindicate his course. He doubted not that the sentence of approval then pronounced, was deserved, and he as little doubted, that it had been the same whether the people, whom the gentleman from Augusta represented, had been assembled at one or several places. Mr. T. said there were other times, places and opportunities of vindication, besides the day and place of a county election. There was all the time between the adjournment of the Legislature and the election. There was time and opportunity enough allowed for personal communication between the representative and constituent—and more than all, there was a free press, which affords the very best means of defence against groundless accusation. All these were within the power of the representative, and besides, he would always meet a large portion of his constituents at the court-house on the day of election, no matter how many separate election districts are established in the county.

As to the argument of evil from the power of demagogues, Mr. T. said it was peculiarly gratuitous and unfounded. He had supposed that the best mode of enhancing the power of that class of politicians, was to assemble the people in as large masses as possible. He supposed it was upon masses they operated, through the instrumentality of a popular cant or slang, or eloquence, if you please, appealing to the passions and prejudices of men, which we are told, in large assemblies are contagious. It had been said elsewhere, in reference to the popular assemblies of Athens, *that if every Athenian were a Socrates, still every Athenian assembly would be a mob.* It was an argument against pure democracy in favour of *representative*; if there was any truth in it, for any purpose; certainly for none more, than to establish the utility of separate elections. If you wish to temper the fierce spirit of democracy, this is precisely the best mode. If you fear tumults, popular excesses, riots, and all the infinite evils connected in the imaginations of some gentlemen, with elections, this is the way to eschew them. Mr. T. thought the separate elections, in their effects on the political body, might without impropriety be likened to the Franklin rods—the one disarmed the clouds of their destructive elements, the other disarmed democracy of its tumults, its riots, its excesses and excitements, and all those manifold horrors which present themselves to the imaginations of gentlemen, who labour under the *phobia*, if I may so speak of democracy.

The last objections of the gentleman from Stafford coming from him, struck him with the greatest surprise. There was surely a strange inconsistency between his argument to-day and his votes heretofore. If it were true that assemblies of the people were such valuable schools for politics, when the people assembled to elect members of Assembly, why should they be less so if the people were permitted to assemble and elect their Governor and some other public functionaries? Why not open as many schools as possible to the political pupils, the people? As much as the gentleman seems to estimate these schools for political instruction, he has voted in this Convention to have as few of them as possible. There was an inconsistency in this which he could not reconcile. He had never before seen an ardent friend of general instruction voting to reduce the number of seminaries, and diminish the means of instruction. Mr. T. repeated that the system of precinct elections, which had received the countenance of the Legislature, and which were becoming every day more popular, as their beneficent operation and effects were more and more developed by experience, in his opinion, deserved any thing at the hands of this Convention, rather than its reprobation. And after all, if it were even obnoxious to the objections urged by the gentleman, and devoid of the paramount considerations of advantage, which justify its continuance, it is not a fit subject for the deliberations of those who are deputed to frame a code of fundamental laws. He therefore trusted that the amendment would be rejected by the Convention.

The question being taken, the amendment was rejected.

The thirteenth section having been read, (which completes that part of the Constitution relating to the Legislative Department,)

Mr. Wilson moved that the Committee rise; but the motion was rejected: Ayes 32.

The other sections were now read *seriatim*, down to the twenty-seventh inclusive.

Mr. Leigh moved to amend the twenty-seventh section by prefixing thereto the words following:

"The Attorney General shall be appointed by joint vote of the two Houses of the General Assembly, and commissioned by the Governor; and shall hold his office during the pleasure of the General Assembly," and carried without opposition.

Mr. Leigh moved further to amend the section by adding at the end of it the following:

"The sheriffs and coroners shall be nominated, by the respective County Courts, and when approved by the Governor, shall be commissioned by him. The justices shall appoint constables; and all fees of the aforesaid officers shall be regulated by law;" which was agreed to.

The twenty-eighth section was next read as follows:

"XXVIII. Judges may be removed from office by a concurrent vote of both Houses of the General Assembly; but two-thirds of the whole number elected to each House must concur in such vote, and the cause of removal shall be entered on the Journals of each. The Judge against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon."

Mr. Giles moved to amend the section by striking out in the former part of it, the words "the whole number elected to," before the words "each House:" so as to make that part of the section read, "but two-thirds of each House must concur in such vote." So as to remove a Judge by a vote of two-thirds of the members present, and not two-thirds of all the members of the body.

Mr. G. supported his amendment in a speech, which was replied to by Mr. Leigh. The question was then taken and decided in the negative—Ayes 41, Noes 43.

The twenty-ninth section was read as follows:

"XXIX. Writs shall run in the name of the Commonwealth of Virginia, and bear test by the clerks of the several courts. Indictments shall conclude Against the peace and dignity of the Commonwealth."

Mr. Cooke now read an amendment in the words following, which he intended hereafter to offer to this section:

"When a new county shall hereafter be created, it shall be the duty of the General Assembly to make provision by law, for securing to the people of such new county an adequate representation in the Legislative bodies. And, if the object cannot be otherwise effected, it shall be competent to the General Assembly to re-apportion the whole representation of such one of the four great districts aforesaid, as shall contain such new county within its limits, as defined by this Constitution. But it shall not be competent to the General Assembly, under any circumstances, to increase or diminish the number of Delegates herein before assigned to the four great districts aforesaid. It shall, moreover, be competent to the General Assembly to re-apportion, from time to time, the representation of the Senate, of the people of the two great divisions aforesaid of the Commonwealth, respectively. But the number of Senators assigned by this Constitution to the two great divisions, to wit: nineteen to the Eastern, and thirteen to the Western, shall remain unchanged."

The thirtieth section was read as follows:

"XXX. The Executive Department of the Government shall remain as at present organized, and the Governor and Privy Councillors shall continue in office, until a Governor, elected under this Constitution, shall come into office—and all other persons in office when this Constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office till successors shall be appointed, or the law shall otherwise provide; and all the courts of justice now existing shall continue with their present jurisdiction, until and except so far as, the Judicial system may or shall be hereafter otherwise organized by the Legislature."

Mr. Cooke read another amendment, which he proposed hereafter to offer to this scheme, as follows:

Provisions for carrying this Constitution into effect:

"I. It shall be the duty of the Executive Department of the existing Government, so soon as all the returns required by the twentieth section of the act of the General Assembly, entitled "an act to organize a Convention," shall have been made, if it shall appear that a majority of all the votes given is for ratifying this amended Constitution, forthwith to make proclamation of the fact.

"II. And it shall moreover be the duty of the Executive Department, in and by such proclamation, to command the sheriffs and other officers directed by law to hold and superintend elections under the penalty of _____ dollars for failing to obey such command, to open polls in their respective counties, cities, towns and boroughs, and in the election districts established by law in their respective counties, on the [first Monday in November, in the present year,] for the election of a Delegate or Delegates, as the case may be, to represent the counties, towns, boroughs, and districts, respectively, mentioned and described in the third article of this Constitution,

and of a Senator to represent each of the Senatorial districts described in the fourth article.

"III. So soon as the election of Delegates and Senators shall have been made, the previously said existing Senate and House of Delegates, elected under the old Constitution, shall cease to have legal and constitutional existence.

"IV. Should any of the contingencies herein before mentioned, render it necessary or proper to convene a General Assembly, after such election shall have been made, and before the time herein after appointed for the first regular annual meeting of the General Assembly under this amended Constitution, the new General Assembly shall be convened by the Executive Department holding its power and authority under the old Constitution.

"V. The first regular General Assembly under this amended Constitution, shall convene and assemble at the Capitol in the City of Richmond, [on the first Monday in January, in the year 1831.]

"VI. The powers and duties of the Executive Department under the old Constitution, cease and determine, and those of the Executive Department under the new Constitution, shall commence, as soon as may be after the commencement of the first regular session of the General Assembly elected under the new Constitution.

"VII. All officers, whether civil or military, holding their offices under the old Constitution, whose cases are not herein provided for, shall continue to hold their offices under the new Constitution, by the same tenure, and for the same time, as under the old Constitution.

"VIII. All the Courts of Justice now existing in this Commonwealth shall continue, with the same jurisdiction as heretofore, until the said Courts shall have been modified or abolished, or the jurisdiction thereof modified or taken away, by an Act or Acts of the General Assembly, made under the restrictions and limitations herein before provided."

The thirty-first (and last) section was then read.

And the Committee of the Whole having thus gone through the draught of an amended Constitution, reported by the Select Committee,

On motion of Mr. Summers, it rose and reported the same, with the amendments, to the House.

IN CONVENTION,

Mr. Leigh offered the following resolution:

"Resolved, That the third article of a draught of a Constitution reported by the Select Committee, be re-committed, with instructions to the Committee to apportion Delegates among the several counties, towns, cities and boroughs of the Commonwealth, so that the number of Delegates shall not exceed one hundred and fifty, and so that the same proportion of the whole Delegation be assigned to each of the four great divisions of the Commonwealth, as is contained in the said article. And that the fourth article be re-committed to the same Committee."

Mr. Claytor moved the following amendment to the instructions moved by Mr. Leigh:

"And that the said Committee be instructed so to arrange the Senatorial Districts, as to conform as near as may be to the principle on which the members of the Senate are apportioned between the Districts East and West of the Blue Ridge."

In advocating this amendment,

Mr. Claytor observed, he would simply assign the reason why he made this motion. It would be apparent to any person who would take the trouble to make twenty figures, that the scheme of representation of the gentleman from Albemarle, adopted by this Convention, was based upon the white population of the State as ascertained by the Census of 1820. The white population of the State as ascertained by that Census, was 603,081; divide this number by thirty-two, the number of Senators, the quotient is 18,846. The white population West of the Blue Ridge, was 254,208; divide this by 18,846, and it gives thirteen and a fraction of a little less than one-half. The white population East of the Blue Ridge was 348,873; divide this by 18,846, and it gives eighteen and a fraction of rather over one-half. The gentleman from Albemarle has merely given the benefit of these fractions to the East. This is his only variation from the basis of white population by the Census of 1820. What I ask is, that this rule thus determined by this Convention to be just as between the two great divisions of the State, may be applied in the distribution of representation amongst the smaller sub-divisions, that in the distribution of power, the people I have the honor in part to represent, may have the full benefit of the rule adopted by the Convention as the just measure of political power in the State. Have the Committee done them this justice in their report? To show that they have not, it is only necessary to state the fact, that the district as reported by the Committee, composed of the counties of Bedford, Franklin, and Patrick, contained by the Census of 1820 a white population of 22,956; that composed of the counties of Campbell, Pittsylvania and Henry, 24,374; while that composed of the counties of Halifax and Mecklenburg contained

only 16,310; that composed of the counties of Buckingham, Cumberland, and Powhatan, 13,803; and that composed of Petersburg, Prince George, Surry, and Isle of Wight, only 13,741. It was not my intention to make a speech upon this subject, but simply to submit these few statements in explanation of the reasons which have induced this motion—and with them I leave it to the Convention.

Mr. Leigh said, he hoped such instructions would not be given to the Committee, as it would only operate to trammel them and still farther to increase a difficulty which was already greater than any one could possibly conceive, who had not attempted the task assigned them. The Committee had done their best: but as to perfect equality, the thing was unattainable, if regard was to be had to existing county limits. The Committee had made the several districts, upon the whole, as nearly equal as they knew how to make them. Where a county was defective in its representation in the House of Delegates, the Committee had endeavoured to compensate the inequality by increasing its weight in the Senate; so as, *on the whole*, to do all the justice in their power. The whole effect of the present amendment would be to encumber them with new trammels.

Mr. Scott spoke for some time without being heard distinctly by our Reporter—the House being in some confusion. When he was heard, he was denying having supported the compromise of Mr. Gordon on the avowed idea of its having been based upon either of the contested principles which had been proposed as a basis of Representation: he advocated it with the express disavowal of its being established on the white basis, the mixed basis, or Federal numbers. The gentleman from Campbell had found an accidental coincidence between some of its numbers and the white basis according to the Census of 1820: but it had an equal and even greater degree of coincidence with the plan of the gentleman from Northampton, (Mr. Upshur.) Mr. S. concluded, by entering his protest against being understood as advocating this or that principle of representation as involved in the plan of the gentleman from Albemarle: it had been brought forward as a compromise, and as such he voted for it.

Mr. Claytor addressed the House as follows:

I know nothing whatever of the basis on which the gentleman from Albemarle, founded his plan, but from the results of calculations, I take it for granted, however, that he must have had some general basis which has induced him to select this particular apportionment in preference to any other; and as the gentleman from Fauquier denies the sufficiency of the evidence, I have offered to prove that that basis is, in fact the white population of 1820, with an arbitrary variation of mere fractions. I must be permitted to submit to the House the results of a few more calculations upon that subject. I have shewn that in the division of power in the Senate between the East and the West, the only variation from the white population of 1820 was giving a fraction to the East. Let us now examine the apportionment in the House of Delegates. The whole white population of the State in 1820, was 603,081—divide this by 127, the number of members in the proposed House of Delegates, and the result gives 4,749 as the average number entitled to elect a Delegate upon that basis. Compare the apportionment in the House of Delegates, as proposed by the gentleman from Albemarle, with this calculation, and the result is as follows:

The Western district, white population, 133,112—29 members is one for 4,590: the Valley white population 121,096—24 members is one for 5,045. Middle district white population, 187,186—40 members is one for 4,679. Tide-water district white population 161,687—24 members is one for 4,755; thus shewing in each district only a slight fractional variation from the white population of 1820. Taking the average of the four districts, and the result is 4,767, varying only 18 from the precise number given by the equal representation of the white population as ascertained by the census of 1820. Sir, all these results may be *purely* accidental, but to my mind they look much like design, and as I have been unable to discover any other basis which would produce results approximating so nearly to those arrived at by the gentleman from Albemarle, my mind could not avoid the conclusion that this is the true basis of his proposition. But, Sir, grant to the gentleman from Fauquier, that it is not—I only ask that his basis, whatever it may be, whether it be the white population of 1820, that of the gentleman from Northampton, or that of any other gentleman, may be fairly worked out to its results—that, that which this Convention has established as just for the whole State, may be equally applied to all its parts—and not after their establishing one rule (arbitrary if you please) for the State, will fit another equally or more arbitrary in its character for districts, by the operation of which the people of that particular section of the State I have the honour in part to represent, are to lose a large portion of the political power, they would be justly entitled to, if the general rule you have adopted were fairly and justly applied. But, Sir, have the Committee adopted any such just rule in their apportionment? If they have adopted any rule whatever, it approaches more nearly to the Federal number as ascertained by the census of 1820, than any other I have been able to discover—and surely it will not be contended that this is the basis adopted by the gentleman from Albemarle—but even

in the application of this rule, unjust as it is, it has been unjustly applied to the particular section of country in question. Sir, upon Federal numbers, the two upper districts South of James River and East of the Blue Ridge, are quite too large.

Sir, I know not how other gentlemen representing that section may feel upon this subject—but, Sir, I should be very unwilling to meet my constituents, after giving my consent to any arrangement which would leave 11,000 white persons unrepresented in the two Senatorial districts, embracing that section of country with which they are locally united—almost a sufficiency to entitle them to another Senator. Sir, this injustice never shall be done to them with my consent—I never can, never will, vote for any such arrangement.

But the gentleman from Chesterfield says, that any person who will attempt to make a more equal arrangement, observing the county limits, will find it a difficult task. Sir, I have taken the trouble to re-arrange the counties, composing a few of the districts as reported by the Select Committee, according to the white population of 1820, and will trouble the Convention with some of the results, which I think they will perceive are less unequal than those of the Select Committee.

Five districts as arranged by the Select Committee.

White population of 1820.

Bedford,	10,953	Charlotte,	5,005
Franklin,	8,227	Lunenburg,	3,873
Patrick,	3,776	Nottoway,	2,805
	<hr/>	Prince Edward,	4,627
	22,956		<hr/>
			16,310
Campbell,	8,447		
Pittsylvania,	12,626	Buckingham,	7,345
Henry,	3,321	Cumberland,	3,966
	<hr/>	Powhatan,	2,492
	24,394		<hr/>
			13,803
Halifax,	8,758		
Mecklenburg,	7,710		
	<hr/>		
	16,468		

I should propose to re-arrange those five districts as follows :

Patrick,	3,776	Mecklenburg,	7,710
Henry,	3,321	Charlotte,	5,005
Franklin,	8,227	Lunenburg,	3,873
	<hr/>	Nottoway,	2,805
	15,324		<hr/>
			19,393
Pittsylvania,	12,626		
Halifax,	8,758	Prince Edward,	4,627
	<hr/>	Buckingham,	7,345
	21,384	Cumberland,	3,966
		Powhatan,	2,492
Bedford,	10,953		<hr/>
Campbell,	8,447		18,430
	<hr/>		
	19,400		

It will at once be perceived, that the only material variation from equality in this arrangement, is in the two first districts: this, which is far less than the inequality of the districts as reported by the Committee, is rendered less important, by the fact, that there is an intimate connection in all matters of local interest throughout much the greater part, if not the whole of those two districts—and taking the average of the two, it gives 18,354, within a mere fraction of the number which ought to give a Senator. I have also made a different arrangement, from that proposed by the Select Committee, of the counties composing the six upper Senatorial districts on the South side of James River and East of the Blue Ridge, as reported by the Committee, with the details of which I shall not now trouble the Convention—but merely observe that it produces results at least as nearly approximating to equality upon the principle for which I contend, as in those before referred to, while at the same time, a proper degree of attention is paid to the local interests and feelings of the counties composing the several districts; thus demonstrating that neither county boundaries nor local interests present any serious obstacle to arranging the Senatorial districts in that section of the State, with that practical approximation to equality and proper regard to the just claims of the people whom I have the honour in part to represent, for which I

contend. Sir, this is all the amendment I have offered, professing to instruct the Committee what to do, and I trust it will be adopted.

The question was now taken on Mr. Claytor's amendment and decided in the negative: Ayes 34, Noes 46.

So the amendment to the instructions was rejected.

Mr. Leigh now moved to amend the instructions, by adding that the fourth section also (relating to the apportionment of the Senate) be referred to the same Committee.

Which having been agreed to, the House then adjourned.

WEDNESDAY, JANUARY 6, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Courtney of the Methodist Church.

The Chair announced that the Select Committee were not yet ready to report on the subject of apportionment.

The House then proceeded to take up the amendments reported by the Committee of the Whole to the draught of the Constitution.

The first amendment was in the fifth section, which reads as follows:

"V. Any person may be elected a Senator who shall have attained to the age of thirty-years, and shall be actually a resident and freeholder within the district, or duly qualified to vote for members of the General Assembly according to this Constitution: And any person may be elected a member of the House of Delegates, who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, or duly qualified to vote for members of the General Assembly according to this Constitution: *Provided*, That all Ministers of the Gospel and Priests of every denomination shall be incapable of being elected members of either House of Assembly."

The amendment proposed to strike out the words "or duly" where they occur in the parts of the section relating to the qualifications of members of the Senate and of the Assembly.

Mr. Fitzhugh said, that if the amendment left the clause such as to confine the election to the two Houses of Assembly, to the real freeholders, who were such in truth, he should be in favour of it; but understanding it to leave mere nominal freeholders eligible, he should vote against it.

A conversation took place between Messrs. Leigh and Fitzhugh, as to the value of a freehold—the latter contending, that a man might own twenty-five acres of land, so poor as not to be worth one dollar, which the former believed scarcely possible.

Mr. Claytor said, that he was taken wholly by surprise, not having paid particular attention to this amendment in Committee of the Whole. The principle was entirely new, that those who had a right to elect, should not have also the right to be elected. He had never heard such a position advanced before. He could not but admire the strange course pursued in this body: if the power of selection was to be exercised by any body but the people, the utmost latitude of choice was readily accorded. If a Judge, for example, was to be appointed, he might be taken from any source whatever; but the moment it was the people who were to exercise the power, it must forthwith be guarded and circumscribed with the most jealous care. The Convention had determined, that not only freeholders, but that every leaseholder, house-keeper, and head of a family, might exercise the right of voting; yet, here they were to be restrained from choosing, who among themselves should be their representative. Mr. C. said, he had more confidence in the virtue and intelligence of the people, than thus to restrain them. He had not the least apprehension, but that they would choose persons for their representatives, who gave sufficient evidence of having a common interest with them. There seemed to be a strange dread of giving power to the people. If it was proposed, that they should be allowed to elect the Governor, the House was immediately alarmed with the dangers of whiskey-drinking and electioneering intrigues. If it was proposed to allow them to choose their own militia officers, the same dangers were again paraded before their view—it would lead to whiskey-drinking and to electioneering. Gentlemen were willing to leave them no other election, but that of their own representatives; and now, even this was to be further restrained, and they were to be told, "this man you may take, but this man you shall not!" He could approve of no such doctrine. Having first decided who were to be the sovereigns of the land, the Convention ought to leave them in perfect freedom to choose among themselves whom they would.

Mr. Tazewell said, that if there had been no other provisions in this Constitution to which the gentleman from Campbell had given his assent, and which went on the same principle with the present, the argument of the gentleman would have had

more weight. But the gentleman had consented that a man might *elect* at the age of twenty-one, yet he might not *be elected* until he was twenty-five, as a Delegate, or until he was thirty, as a Senator, or as Governor of the State. What became of the gentleman's principle, that every one who was qualified to elect, was qualified also to be elected? To be elected, a man must reside in the county electing; but to be a voter, no such restriction was necessary. Here the gentleman's principle failed again. And the ground of his opposition, viz: that the principle of the amendment was new and unheard of, had been destroyed by his own act in assenting to these provisions. He should not enter on the merits of the amendment.

Mr. Claytor admitted that in these cases he had certainly consented to an infringement of the principle; but this formed no reason why he should go farther, and consent to a yet greater violation of it, especially when the gentleman did not pretend to offer a single argument in its behalf. What need could there be for such a limitation? Did the possession of freehold any better qualify a man for the duties of Legislation? Unless some good reason were shewn him, he could not consent to the amendment.

The question was taken and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Goode, Marshall, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter and Perrin—47.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes and Upshur—42.

So the amendment was agreed to.

A similar amendment having been proposed, as applying to Senators, Mr. Claytor demanded the ayes and noes also; hoping that some who had insisted on this as a qualification for a Senator, might not insist on it in a Delegate.

The question was accordingly taken by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter and Perrin—48.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Stuart, Thompson, Joynes and Upshur—42.

The next amendment was the insertion of the words "all persons holding lucrative offices and" in the same section, after the words "all Ministers of the Gospel," (so as to exclude office-holders under the State from a seat in the Legislature.)

Mr. Wilson wished to render the clause more definite, by inserting, "under the Commonwealth," but, Mr. Leigh objected: the words as they stood, were those of the old Constitution, the interpretation of which had been fixed and undisputed for fifty-four years.

The amendment to the amendment was lost; and the original amendment was then agreed to.

The following letter of resignation was now laid before the House, by the President:

RICHMOND, JANUARY 3, 1830.

SIR,—I hereby resign my seat as a member of the Convention, being prevented by ill health from performing my duty as a member of that body.

Yours, respectfully,

J. MACRAE.

Hon. P. P. BARBOUR, }
President of the Convention. }

Mr. Scott announced to the House that the Delegation from the district in which Mr. Macrae belonged, had agreed upon Mr. Thomas Marshall of Fauquier, as a suit-

able person to fill the vacancy occasioned by the resignation of that gentleman, and Mr. Marshall thereupon took his seat in the Convention.

The remaining amendments reported by the Committee of the Whole, were then severally agreed to by the House.

The Convention returned to the draught of the Constitution, and the Chair announced, that it was now open to farther amendments.

Mr. Upshur, with a view to remove any doubt as to the construction of the first part of the fifth section, moved to amend it by inserting the words "by virtue of his freehold" so as to make it read "any person may be elected a Senator, who shall have attained to the age of thirty years, and shall be actually a resident and freeholder within the district, qualified *by virtue of his freehold* to vote for members of the General Assembly according to this Constitution."

The amendment was agreed to, and a similar amendment was inserted in the latter part of the section, referring to members of the House of Delegates.

The tenth section was amended on Mr. Leigh's motion, by striking out the following words, as surplusage, the same thing being provided for in another clause: "nor establish by law any subordination or preference between different sects or denominations."

Mr. Fitzhugh moved to insert in the tenth section the following amendment:

"Nor shall any capitation tax, either for State or county purposes, be imposed, except in time of war, on the free white citizens of the Commonwealth."

Mr. M'Coy demanded the ayes and noes on this motion, and they were ordered by the House.

Mr. Randolph hoped the gentleman from Fairfax would explain to the House the justice of making this discrimination between imposing a capitation tax on free white citizens and on slaves. He would listen with pleasure to the gentleman's explanation.

Mr. Fitzhugh replied, that he would with pleasure give the gentleman the explanation he desired. The discrimination rested on this principle, that the tax on slaves was a tax on property; they were taxed as property, not as persons. For his own part, he should prefer an *ad valorem* tax on slaves together with all other property: but he could not succeed in carrying such a measure. His object was to exempt those from being taxed who had nothing to pay a tax with, while the rich man was taxed no more who had thousands to pay it out of.

Mr. Randolph said he could not see the justice of the discrimination.

The owner of the slaves was taxed whether they were taxed *per capita* or *ad valorem*. The Convention were engaged in extending the blessings of free Government to such as were unwilling, and *said* they were unable to pay any part of the public expenses. Mr. R. said he would make them both willing and able; he would constrain their will, and would confer the ability. There was no free white citizen of this Commonwealth, (unless he was what the French were in the habit of styling a *mauvaise sujet*.) who was a labourer and able to work, who was not *able* to pay a tax to the State. There was no free man with that self-respect which the enjoyment of freedom naturally conferred, who would not be willing to contribute his mite to the expenses of his Government. He was unwilling to admit that there existed in Virginia a class of vagrants and Lazeroni, who were actually unable to make any contribution whatever toward the expenses of the State. He was against the amendment of the gentleman from Fairfax. He had been told that it was valuable, inasmuch as it might operate in restraining the latitude of the Right of Suffrage. He would not give a straw for all the qualifications prescribed for the exercise of the Right of Suffrage in that paper, (pointing to the draught of the Constitution.) For his part, he had rather see the propositions offered, he believed, by a gentleman from Monongalia, and proposing Universal Suffrage, adopted at once. This was Universal Suffrage—it was that in effect.

He should not vote for the amendment in order to disqualify any one from exercising the Right of Suffrage. He would not give one straw for all that had been done with that view, nor for what the House had voted that morning as to the qualifications of persons to be elected. He would not give a farthing for the whole of it. The House had introduced a principle which was utterly subversive of all free Government. None of its free institutions could stand for a century with such principles at the bottom of them. He regarded with consummate—he was about to say contempt—but with the most consummate and profound indifference—all those miserable little distinctions which had been introduced. Who, he asked, must govern the election? Was it not the class from which the members of both Houses were drawn? The election must always be subservient to those who voted. He had voted with reluctance for the clauses inserted this morning. The whole was illusory—it was all deceptive: They stood upon a quagmire which would give way beneath their feet. Mr. R. said he would not consent that the poor man should be taxed who owned but

one slave, in order to extend the blessings of free Government to Lazeroni, who according to the old proverb were able to sing, and whom he was for making to sing.

Mr. Fitzhugh said, he had the same objection to the extension of the Right of Suffrage, with the gentleman from Charlotte—and he was ready to vote for any plan which should require a fair amount of property in order to a man's voting. He was truly sorry there should be such a Lazeroni in Virginia—but he had seen such a class, although the gentleman was unwilling to admit its existence. The Convention was about to exclude from the Right of Suffrage, all such as had no property: To take away from these people all ground of complaint, he would exempt them from taxation; so that they could not say we were obliged to pay Government, while they were allowed no share in it.

Mr. Venable said, he was no advocate for a capitation tax of any kind. He was willing the subject should be left with the Assembly; but being convinced, that a capitation tax on slaves was unjust, when the subject was up, and it was about to be recognized in the Constitution, he was for having the *whole* subject taken into consideration. Let the Convention express its opinion upon the existence of any capitation tax at all. It could be, and it had been shewn, that if the proposition was true, that taxes ought to be laid in proportion to the ability to pay, then a capitation tax on slaves was unfair and improper. If so, why not extend the prohibition to slaves as well as to whites? A district, consisting in part of black and in part of white population, was no more able to pay taxes, than a district of the same extent, filled with a population wholly white—nor so able—because the labour of slaves was less economical and less profitable than the labour of white men. If, then, equal taxes were laid in other respects, on two such districts, and a capitation tax on slaves was superadded, it was most unjust and unequal in its effect. One of the districts would be doubly taxed, and more than doubly.

Mr. V. said, he should vote against the present amendment—but was in favour of abolishing capitation tax entirely.

Mr. Scott declared his intention to vote for the amendment, as a preventive of Universal Suffrage—but moved to amend it as follows: "nor shall any person be chargeable with any tax on real or personal estate, whose real and personal estate is not chargeable with a revenue tax equal to fifty cents."

The amendment would not have any material effect upon the revenue. A large portion of those, whose tax was below that amount, were annually returned insolvent by the Sheriff.

Mr. Fitzhugh said, he should prefer to have the other amendment offered as a separate measure and not connected with his.

Mr. Wilson said, this was the same proposition the gentleman had offered before and which the House had rejected. This would go to destroy that provision which allowed all housekeepers to vote.

Mr. Powell regarding the proposition in the same light, demanded the ayes and noes—and they were ordered accordingly.

Mr. Scott allowed this measure could, in some degree, retrench the Right of Suffrage, but by very different means from what had formerly been proposed. This exempted from payment, the former had required it.

The question being put on Mr. Scott's amendment to the amendment of Mr. Fitzhugh, it was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Goode, Marshall of Richmond, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Stanard, Holladay, Fitzhugh, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Neale, Rose and Coalter—33.

Noes—Messrs. Dromgoole, Alexander, Tyler, Clopton, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Smith, Miller, Baxter, Logan, Venable, Madison, Mercer, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Joynes, Bayly, Upshur and Perrin—60.

Mr. Johnson moved to amend the amendment of Mr. Fitzhugh, so as to make it apply to *State taxes*, but not to county levies.

This amendment was negative—Ayes 43, Noes 46.

Mr. Venable moved to amend it by inserting "or on slaves."

But this amendment also was rejected.

The question was now about to be put on Mr. Fitzhugh's amendment, when

Mr. Randolph addressed the House. He said that the main reason which had been assigned in behalf of the amendment, was the inability of certain free white persons

to pay *any* tax. Now, he should be glad to know how their ability to pay a tax was likely to be increased by the pressure and privation incident to a state of *war*? In peace the man might be able by his mattock and his spade to earn enough to pay a small tax, but how war was to confer an ability which peace did not allow, he was so dull as to be unable to comprehend. The amendment proposed that no capitation tax should be laid on a certain description of persons *except in time of war*. If the principle was sound, this exception was most exceptionable. But the principle was not sound. Every man enjoying the blessings and privileges of a free Government was bound to pay them, except paupers. But this amendment was not intended to apply to paupers: it was made for hearty, able men, for sturdy beggars; not such as were decrepid and helpless.

He objected to the amendment on another ground. The Convention were acting on the Legislature as a spider acted on a fly: they were tying up its legs and binding fast its wings, so that it had neither leg nor wing to go with. He heard much said about trusting the people: every body was ready and willing to trust the people: but the delegates of the people, whom the people had chosen as their own immediate representatives; these were held unworthy of any sort of confidence. He thought the people were trust worthy—just so far as this—they were very capable of choosing their own agents. They had sagacity and virtue enough to decide between worth and wisdom and intelligence on the one side, and their opposites on the other; and they having established their agents with power to act for them, he was for leaving more to those agents than some gentlemen seemed willing to do. If gentlemen would have no capitation tax, then in the name of justice let the exemption be equal. Here Mr. Randolph supposed the case of two counties, one with and the other without slaves, and shewed the unequal operation of the capitation tax if on slaves only. He said this was unjust and unequal: and grievously did he feel that want of nerve and want of decision which caused gentlemen from the Eastern part of the State, at the beginning of the proceedings of this Convention, not to claim what they had a right to enjoy, the representation of their *whole* population. Then they would have had something to stand on. They would have had the (*ρῶν στῶ*) of Archimedes. Then the gentlemen on the other side would have been glad to meet them on the basis of Federal numbers. And why? Because he would not cast on his brethren of the West such an imputation as to say, that they would not have been willing to grant to their brethren of the East what was granted to the Southern States in a hard-driven bargain by their other brethren, the yankees—what was granted them by brother Jonathan.

Mr. Fitzhugh said, the gentleman from Charlotte had represented that as the main argument urged for the amendment which had not been urged at all. The ground he had taken had been, that it was most unjust to compel a man not worth one cent in the world, to pay as much tax as another man worth \$100,000. And another consideration had been urged by others, that it would tend to limit the Right of Suffrage from going to universality.

Mr. Randolph replied. The gentleman now said that it was unjust to compel a poor man, a ditcher, to pay as much tax as a man worth \$100,000. The injustice was not half so great—it was precisely half as great—as to tax the slave of the poor man who owned but one negro and hired him out as a labourer—while the man who held thousands in Bank stock paid no tax at all. Here was a case, not where rich and poor were taxed alike, but where they taxed the poor man and exempted the rich altogether: where they taxed the negro of the poor man, but left the Bank stock of the rich man wholly free from taxation. If it was unjust to tax the poor labourer and the rich capitalist *equally*, *a fortiori* must it be unjust to tax the poor and let the rich go free.

He was very sorry—very sorry indeed—that the gentleman from Chesterfield had brought his mind to vote for this amendment. He was going to vote for it as a restraint upon suffrage. He would not give a straw for the restraint. Suffrage by this Constitution was universal in fact, and it might as well be so in terms: it should be in name what it was in substance. Having extended it as they had done, the Convention had done an act of monstrous injustice, and by consequence of equal impolicy. They had excluded all the well-brought-up sons of freeholders. That was a class, as he had said on a former occasion, towards whom his heart yearned, and in whose favour, did not his judgment forbid it, he felt a strong inclination to extend the Right of Suffrage. For his part, so far was he from being unwilling to trust the Legislature to make a Constitution, that for all the experience he had had in the Convention he had ten thousand times rather the Legislature should do it than those who had undertaken the task: he firmly believed it would be in safer hands. He defied any Legislature in the country to make a Constitution less worthy of approbation than that which they had constructed. He would not give a straw for that long list of restrictions about parsons and what not: in practice it would be perfectly unavailing, unless to exclude the meritorious class of persons he had mentioned. He was not afraid to

trust the Legislature. And why not? Because he did not fear to trust the people: And how so? Because the people were the only competent authority to select their own agents. When this was done, they had the principles of free Government. It was now to be determined, whether they were to have a Government that would stand, or whether the fruitless attempt was to be persevered in to make a cone stand upon its apex. Their Government under such a Constitution would be futile—it was impossible it should stand for a century.

The question was now taken, and decided by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Anderson, Coffman, Harrison, Williamson, Johnson, M'Coy, Moore, Smith, Miller, Baxter, Claiborne, Madison, Stanard, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Naylor, Donaldson, Pendleton, George, Byars, Taylor of Caroline, Oglesby, Duncan, Laidley, Summers, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Marshall of Fauquier, Tazewell, Prentiss, Claytor, Saunders, Cabell, Martin, Stuart, Joynes and Upshur—48.

Noes—Messrs. Barbour, (President,) Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Baldwin, Mason of Southampton, Trezvant, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Holladay, Griggs, Mason of Frederick, Boyd, M'Millan, Campbell of Washington, Roane, Morris, Garnett, Cloyd, Chapman, Mathews, See, Green, Loyall, Grigsby, Campbell of Bedford, Branch, Townes, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Bayly and Perrin—47.

Mr. Claiborne moved to amend the fourteenth section, by striking out all that part of it which follows, declaring that the Governor "shall be elected as follows:" and to insert a provision for the Governor's election by the two Houses of Assembly.

Mr. Miller stated, that his colleague (Mr. Beirne,) was absent from sickness, and he should take it as a favor, if the gentleman would consent to postpone this important amendment until he should be able to resume his place, which he had reason to hope would be the case on the following day.

Mr. Claiborne instantly complied, disclaiming all intention to press any measure under such circumstances.

Mr. Nicholas said, he might probably be absent the next day, and he hoped the same indulgence would be extended in that case.

Mr. Henderson said, if the gentleman should be taken sick before the next day, the indulgence ought to be extended to him: but not, if absent on private or professional business.

Mr. Claiborne agreed in this view of the subject, and should act upon it.

Mr. Cabell, after a few prefatory remarks, offered the following amendment to the twenty-second section:

"The General Assembly shall have power to modify or abolish the said Superior Courts, at such times, and to substitute for them, if in their discretion they deem it expedient, such tribunals as the public good may require. And upon the modification or abolition thereof, the salaries of all *officers* holding *offices* therein, or in any wise appurtenant thereto, shall be abolished, unless otherwise directed by law."

The amendment gave rise to a debate, in which Messrs. Marshall, Tazewell, Giles, and Cabell took part.

The amendment was resisted as being unnecessary, the clauses retained in the section going the whole length of its provisions. This was specially pressed by Mr. Tazewell, who agreed in sentiment with Mr. Cabell, as to the main question involved.

The question was at length taken, and the amendment of Mr. Cabell rejected.

Mr. Scott moved to amend the twenty-second section in such a manner as to make the *General Court* a Constitutional Court as well as the Court of Appeals.

Mr. S. explained and urged his amendment, and was followed by Mr. Leigh, who earnestly advocated and pressed the measure, as leading to the most salutary results.

Mr. Powell opposed it as unnecessary, all the ends being as well answered by leaving the subject to the Legislature.

Mr. Henderson made some remarks in reply to Mr. Powell, who rejoined, and was followed by Mr. Leigh.

The question was taken, and decided by ayes and noes as follows:

Ayes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Goode, Marshall of Richmond, Nicholas, Baldwin, Johnson, Mason of Southampton, Claiborne, Madison, Stanard, Henderson, Cooke, Griggs, Pendleton, Morris, Garnett, Mathews, Summers, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Prentiss, Branch, Townes, Massie, Neale, Rose, Coalter, Joynes and Upshur—33.

Noes—Messrs. Barbour, (President,) Jones, Giles, Dromgoole, Alexander, Tyler, Clopton, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Smith, Miller, Baxter, Trezvant, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Holladay, Mercer, Fitzhugh, Osborne, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline,

Cloyd, Chapman, Oglesby, Duncan, Laidley, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Tazewell, Loyall, Grigsby, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Bates, Bayly and Perrin—62.

Mr. George moved the following amendment to the sixteenth section:

"The Legislature shall meet only once in every two years, unless convened in the manner prescribed by the twenty-seventh article of this Constitution."

He stated that he acted in obedience to the wishes of his constituents in presenting the amendment.

Mr. Campbell of Brooke, asked the ayes and noes, and they were ordered.

Mr. Randolph said, that he was not second to any man in that House, or out of it, in his abhorrence of over Legislation; and he would vote for the amendment with great pleasure, but for one consideration: he was subjected to another Government besides that of Virginia; and as the Legislature of the United States met every year, he wanted that of Virginia to meet every year also, that it might watch them.

The question was then taken by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Williamson, Baldwin, Baxter, Henderson, Osborne, George, M'Millan, Campbell of Washington, Byars, Cloyd, Mathews, Oglesby, See, Morgan, Campbell of Brooke, Wilson, Tazewell, Campbell of Bedford, Townes, Martin, Stuart, Bates, Rose and Coalter—26.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Harrison, Johnson, M'Coy, Moore, Smith, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Chapin, Duncan, Laidley, Summers, Doddridge, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Loyall, Prentis, Grigsby, Claytor, Saunders, Branch, Cabell, Pleasants, Gordon, Thompson, Massie, Neale, Joynes, Bayly, Upshur and Perrin—69.

So the amendment was rejected.

On motion of Mr. J. S. Barbour, the vote on Mr. Fitzhugh's amendment, in relation to the capitation tax, was re-considered. The amendment was then withdrawn to be offered to-morrow.

Mr. Coalter moved an amendment to the twelfth section, as follows:

"And provided, also, that the votes in each county shall be taken at one place to be designated by law."

Mr. Coalter said, he believed the last chapter in the Book of Judges was now gone through: the next would be the first chapter in the Book of Kings, which being King Legislature, he wished it to be as pure as possible: and he hoped all who agreed in that wish would vote for his amendment.

The question being taken, the ayes and noes stood as follows:

Ayes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Nicholas, Johnson, Mason of Southampton, Trezvant, Urquhart, Randolph, Leigh of Halifax, Logan, Stanard, Holladay, Roane, Garnett, Green, Loyall, Grigsby, Rose and Coalter—21.

Noes—Messrs. Barbour, (President,) Jones, Giles, Alexander, Goode, Marshall of Richmond, Tyler, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Smith, Miller, Baxter, Claiborne, Venable, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Taylor of Caroline, Morris, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Marshall of Fauquier, Tazewell, Prentis, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Joynes, Bayly, Upshur and Perrin—74.

So the amendment was rejected.

Mr. Stanard now moved to insert in the twenty-second section, after the word "tribunals," the words, "and of the Judges thereof," so as to read "The jurisdiction of these tribunals and of the Judges thereof, shall be regulated by law."

Mr. S. explained the amendment, as having reference to the duties of Judges out of Court. And it was agreed to.

The House then adjourned.

THURSDAY, JANUARY 7, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Courtney of the Methodist Church.

The Chair announced, that the Select Committee on the subject of the apportionment would not be ready to report till one o'clock, and that they asked leave to sit till that hour.

Mr. Gordon suggested, that it would be also best to suspend the proceedings of the Convention till that time.

Mr. Sumners hoped, that the motion for a recess would be withdrawn, until he had an opportunity of submitting a paper.

He observed, that for some days a proposition had remained on the table, having for its object the interposition of some restraints upon the Legislature in creating new Banks, or renewing the charters of those in existence. The subject, he said, was of much public concern, and he was satisfied that a power which included in its operation the currency of the country, and in its effects embraced and regulated in a great degree the *price* of every species of property, ought not to be left within the power of a bare majority, of a naked quorum of the General Assembly. If the political effects of the Banks, and their agency (sometimes most disastrous) in the affairs of our fellow citizens, was taken into the estimate, he thought that prudence dictated the limitation of the Legislative power to cases challenging the concurrence of three-fifths of both Houses, but if this majority should be regarded as unnecessarily large, and likely to produce injurious restraints, we should be content to change the proposition from three-fifths to majorities of the entire number of members elected to both branches of the Legislature. While he was very desirous of bringing this subject to the consideration of the Convention, he was so fully aware of the disinclination of members to take up new questions, as to doubt whether even one of this moment could overcome the impatience now felt. He, therefore, in moving to take up for consideration the amendment which he had offered, requested that the question might be considered as a test of the sense of the House, whether at this period of its session it was its pleasure to go into the merits of the proposed amendment, and that if it should be the determination of the Convention to enter upon the subject, he was prepared to enforce the necessity, policy and propriety of engrafting in the Constitution the article which he had proposed.

The following resolution was then presented, and read by the Secretary :

"No law shall be enacted by the General Assembly, creating, continuing, altering or renewing any body politic or corporate, with power to carry on the business of banking, or for making loans or discounts, without the assent of three-fifths of the members elected to each branch of the Legislature; nor shall the General Assembly, at any one session thereof, create, continue, alter or renew, more than one body politic or corporate, with power to deal as a Bank, by making loans or discounts."

The Chair said, it would be proper to lay it on the table without taking a question, it being the wish of the mover to give it that direction.

On Mr. Claiborne's motion, the resolution was ordered to be printed.

Mr. Stanard rose to remark, that in order to make the twenty-second section more complete, it would be necessary to make another amendment. In the seventh line of that section an amendment had been made yesterday, directing that "The jurisdiction of the tribunals, *and of the Judges thereof*, shall be regulated by law." With a view of accommodating the first part of the section to that amendment, he would move to add in the second line after the words "Court of Appeals," the words "and the Judges thereof," and also after the words "in such Superior Courts as the Legislature may from time to time ordain and establish," the words "and the Judges thereof."

Mr. Cabell said, he did not profess to set himself up for a critic; but it seemed to him that this amendment would bring back things to the same situation in which they were before the amendment, which he had had the honor to submit, had been adopted by the House. He thought that the proposed amendment would fix the Judges in office, even after their Courts were abolished.

Mr. Stanard admitted, that the member which he wished to introduce, might not very well cohere with the other members of the same sentence; but it struck him as a necessary provision. As to the remark of the gentleman from Pittsylvania, which seemed to him to be the offspring of a high degree of jealousy on this subject, he begged leave to say, that his amendment was only calculated to give the Judge the necessary Judicial power in vacation as well as in the terms of the Courts—out of Court as well as in Court—and it was certainly essential to give such power to the Judge. He would ask of the Chair to confine his amendment at present to the "Court of Appeals," and to take the question first in that shape—but (on Mr. Morris's suggestion,) he moved to introduce the words in question, after the word "establish," in the twenty-second section, so as to read: "The Judicial power shall be vested in a Supreme Court of Appeals, in such Superior Courts as the Legislature may from time

to time ordain and establish, *in the Judges thereof*, in the County Courts, and in justices of the peace."

Mr. Cabell asked, why then was not the gentleman from Spottsylvania satisfied with confining his amendment to the introduction of the words "in vacation?"

Mr. Claytor remarked, that the same provision which is now made by the twenty-second section, is to be found in the Constitution of the United States; and if a precisely similar provision in that instrument conveyed the necessary power, where was the necessity of making any change? Why should they not leave it in the present form, when this provision conveyed the necessary power? and when it has been found to answer in the Constitution of the United States for forty years? He remarked also, that if a new provision was to be adopted, it might be necessary to give it a construction new and different from the one already established.

The Chair then read the clause as it would stand with the words "and the Judges thereof," inserted after the word "establish."

Mr. Claytor asked, if the amendment made yesterday did not apply to the Judges themselves? whether it did not cover the whole case; and whence, then, the necessity of a repetition?

Mr. Stanard said, he would not undertake to assign the reasons why this body had given an unanimous vote yesterday in favor of the amendment, and in which he presumed the gentleman from Campbell had united; but he would retort the enquiry upon that gentleman: why make the amendment yesterday, and object to a similar one to-day? He thought it was necessary to carry this amendment out. In the first sentence of the section, the Judicial power is vested in the Courts themselves, but you have not said it shall be in the Judges; and it was to give Judges the necessary jurisdiction *out of Court*, that he wished the amendment introduced into the first sentence. You surely can have no objection, after having declared that the jurisdiction of the Judges shall be *regulated* by law, to say also that it ought to be *vested* in the Judges—and if yesterday it was not superfluous to declare the one, why should it be superfluous to-day to declare the other?

Mr. Claytor observed, as to the unanimous vote of yesterday, he of course did not vote in the negative, but he did not hesitate to say, that he must then have voted without due consideration. It was sufficient for him to recollect that the provisions of the present section were similar to those in the Constitution of the United States, and where was the necessity of holding up a candle to the noon-day sun? or of calling for the meaning of words, which had been interpreted for forty years past?

Mr. Powell asked, if the expressions used in the section before the House, did not necessarily imply a jurisdiction in the Judges themselves. The very terms themselves vest a Judicial power in the courts; and surely they did equally so in the Judges. He considered, therefore, the amendment as not only perfectly unnecessary, but he objected to it, because it might be so construed as to make the Judges constitutional agents as well as the courts themselves. He surely did not wish 'to restrain the Legislature from *bona fide* abolishing the courts, when the public interest imperiously required it; because he hoped, whatever had been done in another State, that the Legislature of Virginia would never so far forget its dignity and its duty; would never become so debased, as to strike at the tenure of the Judges by the abolition of their courts. For his own part, he thought that the amendment adopted yesterday had entirely superceded the necessity of the one now proposed.

Mr. Henderson suggested, that the House had given leave of absence to seven of its members; and among them to the Chairman of the Judicial Committee, and asked whether it were not better to waive the present discussion and have a recess until 1 o'clock.

Mr. Stanard rose to express his surprise at the remarks of the gentleman from Frederick, (Mr. Powell.) It filled him with amazement to hear that gentleman say, that it was perfectly clear, when the jurisdiction was given to the court itself, it was also given to the functionaries of that court. He would ask him as a practical lawyer, if it has never so happened to him in the course of his practice, to have to interpret an act of Assembly, which gave certain powers to courts, when the question arose whether the Judge could also exercise power except in open court. Is it possible, that this question was never brought before him in a Court of Chancery? Is it not an established rule that certain appeals may be granted in open court, which could not be done by the Judge in vacation? The language of the law is, that unless in cases provided for, the functionaries may act in open court, in term time, but not in vacation. And yet the gentleman from Frederick says it is perfectly clear, if you give jurisdiction to the court itself, you must also give it severally to the integers who constitute the court itself. What! does one Judge constitute the court? But, if this doctrine be true, is it not equally true, that if the jurisdiction be given to a Judge in term time, it may be exercised by him in vacation? And why, (Mr. S. asked,) are we so careful in the first sentence of this section, to give jurisdiction to "justices of the peace?" Why discriminate between the "County Courts" and "justices of the peace?" The gentleman from Frederick says, that if jurisdiction be given to courts, it follows as a ne-

cessary consequence that it must be vested in the Judges. True ; but *how* vested in them? Only as members of that court; but not as integers of the court. Mr. S. said, he wished to remove all doubt by the amendment he had offered, that jurisdiction was given to the Judges, in vacation as well as in term time. A writ of habeas corpus is to be sued out, for instance; he wished it to be understood whether a power could be given to the Judge to issue it in vacation.

Mr. Powell rose in reply, and expressed his regret that any thing he had said should have filled the mind of the gentleman from Spottsylvania with amazement. But he was as much amazed at the gentleman's argument, after the concession that gentleman had made. He had allowed that if jurisdiction is given to a court, it is given to the Judges of that court: if so, where could be the necessity of vesting jurisdiction in them by a separate clause? *Cui bono?* Why reiterate what had already been declared? unless it was to give separate jurisdiction to Judges whether in term or in vacation. If this alone was the object, it was a laudable one: but it could be fully attained by the effect of the amendment offered yesterday, giving the Legislature power over the jurisdiction of the court and of the Judge. That amendment completely superseded the necessity of this one. It declared that the jurisdiction of the Judges as well as of the court should be regulated *by law*. Did not this put it in the power of the Legislature to declare that the Judges might have separate jurisdiction for duties out of court? Might not the Legislature declare that a Judge of the Court of Appeals, might, in vacation, grant an appeal? He appealed to the gentleman himself, if the amendment adopted yesterday, did not completely effect this object? If it did not, his not perceiving such to be the fact was, he supposed, to be attributed to the obtuseness of his intellect, or else to the want of his accustomed lucidness of argument in the gentleman from Spottsylvania.

Mr. Henderson now renewed his motion, and the House took a recess till 1 o'clock. After the recess, the House having resumed its session,

Mr. Madison, from the Select Committee to whom had been re-committed the third and fourth sections of the amended Constitution, made the following report:

"III. One of these shall be called the House of Delegates, and shall consist of one hundred and thirty-two members, to be chosen annually, for and by the several counties, cities, towns and boroughs of the Commonwealth; whereof thirty Delegates shall be chosen for and by the twenty-six counties lying West of the Alleghany mountains; twenty-five, for and by the fourteen counties lying between the Alleghany and Blue Ridge of mountains; forty-one, for and by the twenty-nine counties lying East of the Blue Ridge of mountains and above tide-water; and thirty-six for and by the counties, cities, towns and boroughs, lying upon tide-water, that is to say: Of the twenty-six counties lying West of the Alleghany, the counties of Harrison, Monongalia, Ohio and Washington, shall each elect two Delegates; and the counties of Brooke, Cabell, Grayson, Greenbrier, Giles, Kanawha, Lee, Lewis, Logan, Mason, Monroe, Montgomery, Nicholas, Pocahontas, Preston, Randolph, Russell, Scott, Tazewell, Tyler, Wood and Wythe, shall each elect one Delegate. Of the fourteen counties lying between the Alleghany and Blue Ridge, the counties of Frederick and Shenandoah shall each elect three Delegates; the counties of Augusta, Berkeley, Botetourt, Hampshire, Jefferson, Rockingham and Rockbridge, shall each elect two Delegates; and the counties of Alleghany, Bath, Hardy, Morgan and Pendleton, shall each elect one Delegate. Of the twenty-nine counties lying East of the Blue Ridge and above tide-water, the county of Loudoun shall elect three Delegates; the counties of Albemarle, Bedford, Brunswick, Buckingham, Campbell, Culpeper, Fauquier, Halifax, Mecklenburg and Pittsylvania, shall each elect two Delegates; and the counties of Amelia, Amherst, Charlotte, Cumberland, Dinwiddie, Fluvanna, Franklin, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Orange, Patrick, Powhatan and Prince Edward, shall each elect one Delegate. And of the counties, cities, towns and boroughs, lying on tide-water, the counties of Accomack and Norfolk shall each elect two Delegates; the counties of Caroline, Chesterfield, Essex, Fairfax, Greenville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, King George, Nansemond, Northumberland, Northampton, Princess Anne, Prince George, Prince William, Southampton, Spottsylvania, Stafford, Sussex, Surry and Westmoreland, and the city of Richmond, the borough of Norfolk, and the town of Petersburg, shall each elect one Delegate; the counties of Lancaster and Richmond shall together elect one Delegate; the counties of Matthews and Middlesex shall together elect one Delegate; the counties of Elizabeth City and Warwick, shall together elect one Delegate; the counties of James City and York, and the city of Williamsburg, shall together elect one Delegate; and the counties of New Kent and Charles City, shall together elect one Delegate."

"IV. Strike out from the word "counties," in the twenty-fifth line, to the end, and insert—

"Of Brooke, Ohio and Tyler, shall form one district: the counties of Monongalia, Preston and Randolph, shall form another district: the counties of Harrison, Lewis, Wood and Pocahontas, shall form another district: the counties of Kanawha, Mason,

Cabell, Logan and Nicholas, shall form another district: the counties of Greenbrier, Monroe, Giles and Montgomery, shall form another district: the counties of Tazewell, Wythe and Grayson, shall form another district: the counties of Washington, Russell, Scott and Lee, shall form another district: the counties of Berkeley, Morgan and Hampshire, shall form another district: the counties of Frederick and Jefferson, shall form another district: the counties of Shenandoah and Hardy, shall form another district: the counties of Rockingham and Pendleton, shall form another district: the counties of Augusta and Rockbridge, shall form another district: the counties of Alleghany, Bath and Botetourt, shall form another district: the counties of Loudoun and Fairfax shall form another district: the counties of Fauquier and Prince William, shall form another district: the counties of Stafford, King George, Westmoreland, Richmond, Lancaster and Northumberland, shall form another district: the counties of Culpeper, Madison and Orange, shall form another district: the counties of Albemarle, Nelson and Amherst, shall form another district: the counties of Fluvanna, Goochland, Louisa and Hanover, shall form another district: the counties of Spotsylvania, Caroline and Essex, shall form another district: the counties of King & Queen, King William, Gloucester, Matthews and Middlesex, shall form another district: the counties of Accomack, Northampton, Elizabeth City, York and Warwick, and the city of Williamsburg, shall form another district: the counties of Charles City, James City, New Kent and Henrico, and the city of Richmond, shall form another district: the counties of Bedford and Franklin, shall form another district: the counties of Buckingham, Campbell and Cumberland, shall form another district: the counties of Patrick, Henry and Pittsylvania, shall form another district: the counties of Halifax and Mecklenburg shall form another district: the counties of Charlotte, Lunenburg, Nottoway and Prince Edward, shall form another district: the counties of Amelia, Powhatan and Chesterfield, and the town of Petersburg, shall form another district: the counties of Brunswick, Dinwiddie, Greensville and Prince George, shall form another district: the counties of Isle of Wight, Southampton, Surry and Sussex, shall form another district: and the counties of Norfolk, Nansemond and Princess Anne, and the borough of Norfolk, shall form another district."

The report having been for the present laid upon the table,

The Convention resumed the consideration of the amendment moved by Mr. Stanard.

Mr. Henderson called the attention of the Chief Justice to the question, and requested an expression of his opinion, declaring that it would have great weight with him.

Mr. Marshall said, that being thus called out, it was not in his power to remain wholly silent. His opinion was that the amendment was a proper one. There was the same reason, in part, though not entirely, for making a declaration respecting the power of a Judge when out of court, as there was for that of justices in addition to the power of the County Courts. The acts performed by Judges out of court had been very properly enumerated by the gentleman from Spotsylvania. The awarding of writs of *habeas corpus* especially, was always done out of court.

The subject had not occurred to the Judicial Committee, or it would have been attended to by them in making their report. If acts of Judicial power were performed by Judges out of court, the Judges as well as the courts ought certainly to be mentioned in the enumeration of the depositories of that power.

The question was then taken, and the amendment was carried—Ayes 51.

The report of the Select Committee was now taken up, and on motion of Mr. Stuart was again laid upon the table, and ordered to be printed.

Mr. Gordon moved to amend the fourteenth section, (which relates to the Governor,) by striking out the following words: "He shall be elected as follows: At the first election for members of the House of Delegates, to be held under this Constitution, and every third year thereafter, at the times and places of holding such elections, in the several counties and corporate towns, of this Commonwealth, the persons qualified to vote for members of the General Assembly shall vote also for a Governor. A poll of the vote so given in each election district shall be duly kept, authenticated, certified, and laid before the General Assembly, at their next annual meeting, in such manner as shall be prescribed by law. These polls shall be examined by a joint-committee of both Houses—the number of votes given for each person as Governor ascertained, and the result declared by resolution of the General Assembly. The person having the greatest number of votes, if that be a majority of the whole given, and if he be eligible to the office, shall be declared duly elected Governor. If no such person have a majority of the whole number of votes given, then it shall be declared that no election hath been made; and the General Assembly shall proceed by joint-vote of both Houses, to elect a Governor from those, how many soever there may be, if eligible, who shall have the two highest numbers on the polls:" and inserting in lieu thereof: "He shall be elected by joint vote of the two Houses of the General Assembly."

Mr. G. said, he had heretofore voted for the election of Governor by the people, though he had never felt any very great solicitude on the subject, because he never had desired to confer on that officer any additional Executive powers. The Convention had modified that branch of the Constitution so as to render the Governor more independent of the Legislature than formerly, by extending his term of service to three years, instead of one year, and by disqualifying him from being re-elected for three years thereafter, and still more by prescribing that all votes in the Legislature should be given *viva voce*. This brought the representative into direct responsibility to the people. He considered these guards as sufficient: and he was persuaded that conducting the election in this mode would conduce to the repose of the Commonwealth: nor would there be any just objection to it, where the Legislature was so formed that the people wielded the power of that body. He perceived from one clause of the report, that the Committee had found some difficulty on the subject, as they had proposed, that if a majority of the people would not agree in the election, to devolve it upon the Legislature.

This was a case that might often occur; and he considered it as very improper, that after the people had been excited by an unsuccessful attempt to elect their Chief Magistrate, the election should be thrown into the Assembly. It would tend to introduce great heats into that body, and might lead to intrigue and bargaining. With these views, he had concluded to propose the amendment he had now offered to the Convention.

Mr. Morgan moved to amend the amendment, by inserting after the word "elected," the word "annually," and on this motion, he asked the ayes and noes. They were taken accordingly, as follows:

Ayes—Messrs. Anderson, Williamson, Smith, Osborne, Donaldson, George, M' Millan, Campbell of Washington, Byars, Cloyd, Chapman, Oglesby, Laidley, See, Morgan, Campbell of Brooke, Wilson, Saunders, Cabell and Pleasants—20.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Coffman, Harrison, Baldwin, Johnson, M'Coy, Moore, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Mathews, Duncan, Summers, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Branch, Townes, Martin, Stuart, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—74.

The question then recurring on the amendment of Mr. Gordon,

Mr. Powell asked for the ayes and noes, and they were ordered accordingly.

Mr. Clopton said, that the opinion which his best reflection had induced him to form on this subject, had been indicated by the vote he gave when the question was before presented to this body. The discussion which had occurred since, had not created in his mind a single doubt, as to the propriety of an election of the Chief Magistrate by the people. But, he never had given a vote on any subject, where he feared that his constituents did not concur with him. Believing it to be the duty of a representative, whenever his mind, by whatever means, had arrived at moral certainty, as to the wishes of a majority of his constituents, to obey those wishes, or to vacate his seat, he felt it his duty, on the present occasion, to give a vote different from that he had formerly given. He did this with the less reluctance, as he did not consider the election of Governor by the Legislature, subversive of the great principles of free Government. He, therefore, concluded to yield to the will of those, who had empowered him to give a vote its full effect, by voting in the affirmative.

The question was then decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes and Perrin—50.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M' Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell, Stuart, Thompson, Bayly and Upshur—46.

Mr. Tazewell proposed further to amend the section, by striking out the words, "or on such other day as may from time to time be prescribed by law."

The motion was opposed by Mr. Stanard, and before any question was taken, it was withdrawn by the mover.

Mr. Thompson moved to amend the ninth section, which reads as follows:

"IX. The Governor, the Judges of the Court of Appeals and Superior Courts, and all others offending against the State, either by mal-administration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the House of Delegates; such impeachment to be prosecuted before the Senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the Senate shall be on oath or affirmation: and no person shall be convicted, without the concurrence of two-thirds of all the members of the Senate. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the Commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law;" by striking out the words "of the Senate," and inserting the word "present;" so as to make it read "no person shall be convicted without the concurrence of two-thirds of all the members present."

Mr. T. said, he believed the question involved in the amendment, had never been decided directly. If it had, he was still supported by the example of the Convention, in offering it again, for the body was doing and undoing from day to day. He thought the requiring of two-thirds of all the members constituting the Senate, in order to conviction, evinced an unnecessary degree of caution, and was calculated, in practice, to produce great inconvenience—it might often lead to the acquittal of a Judge, when he ought to be condemned. Members might absent themselves to avoid voting, and thus a very few individuals would have it in their power to screen an offender. They had the precedent of thirteen of the State Constitutions, as well as of that of the United States in favour of the amendment he had proposed. They pursued its very words. He asked what evil was likely to follow its adoption? If any gentleman could point out a single case where a Judge had been improperly condemned for the want of such a rule as he proposed to strike out, there might be some reason for retaining it. There had been but three impeachments, indeed but two in the United States, and but one Judge had been convicted in consequence. He believed nobody had ever complained of injustice in that instance. He could not say whether there had been impeachments in the individual States. In England, where the House of Commons was prosecutor, and the House of Lords sat as Judges, a simple majority of a quorum of that House had power to convict. And why should so different a practice prevail here?

The question was now taken, and the vote as counted by the Chair, stood, ayes 45, noes 41; but, a doubt being expressed as to the accuracy of the count, a second count was ordered—when Mr. Thompson called for the ayes and noes, and they were ordered by the House. Before they were taken, however,

Mr. Scott said, that he had been greatly surprised at the vote which had been announced, and not less at the argument in favour of the amendment. Here, said Mr. S., is a party arraigned before a Judicial tribunal—it is a criminal trial—the Senators sit as triers of the fact, and as Judges of the law. Now, if a slave, the most abject in the Commonwealth, is accused of a capital crime, he is brought before five justices, and he cannot be convicted, unless those five justices are *unanimous* in the sentence. Again—if the humblest individual in the community is on his trial for a crime of any sort, he cannot be pronounced guilty, except his twelve constitutional triers are unanimous in their award. But here, you arraign a high public officer before the Senate, and two-thirds of a bare quorum are empowered to pass upon him the heaviest sentence of the law—Yes, Sir, I say the heaviest sentence of the law, because character is dearer than life, especially to men in such stations. There is another principle, which enters deeply into our criminal jurisprudence—It is, that the existence of a doubt—a mere doubt as to the fact charged, acquits the accused. And yet the gentleman from Amherst proposes, that where there was nearly one-third of the Senate not merely in doubt as to the guilt of the accused, but perfectly satisfied of his innocence, he is not to have the benefit of that doubt, but two-thirds of those present are to convict an officer of importance under the Government, and to remove him from office. Such doctrine, Mr. S. said, was at war with all his notions on the subject of criminal justice.

Mr. Thompson observed in reply, that the gentleman from Fauquier had attempted to liken the prosecution of a Judge before the Senate on an impeachment, to a criminal trial before a Court of Law. There was no analogy between the cases, and could be none. The award pronounced by the Senate, was not in the nature of punishment. If the Judge was charged with any criminal offence, the Senate was not the tribunal at which to try it—he was turned over to the courts for trial, and for punishment, if he deserved it.

The charges before the Senate were for acts of a political character—they did not touch character, as criminal offences and felonies did. And besides—he could not see,

if a concurrence of two-thirds of the Senate present was to destroy a Judge's character by their vote, how the concurrence of a number greater than a majority, but not quite amounting to two-thirds in a similar vote, would not do the same thing. The difference as to the effect on character, was unworthy of regard. The *character* of the Judge would be equally affected, but his *office* would not—true—but that was the very thing to which he objected. His office ought to be taken away by the vote which took his character away. In a free and intelligent country like this, no man who had come under the *ban* of a majority of the Representatives of the people, should continue to hold his office—still less a Judge, whose office was of such dignity in itself, and such importance to the Commonwealth. The gentleman from Chesterfield had beautifully and truly said, that the honour we pay to a Judge, is part of his authority—but could the people honour a Judge condemned by a majority of the Legislature of his State, and saved only by the want of votes enough to make up two-thirds of that body? Surely not. The gentleman had referred to the unanimity required of a jury—but there was no more analogy there. The gentleman was too good a black-letter lawyer not to be well acquainted with the origin of the trial by jury. Was the unanimity of twelve men required merely as a test of the *truth* of the charge? The gentleman knew better—it was because in early times the jurors, if they gave in a false verdict, were liable to be attainted. In a subsequent period the requirement was retained, not because it was necessary to the establishment of the truth of the fact charged, but from a spirit of civil liberty, and of mercy to the accused. It never had, nor could be required merely as a test of truth. The gentleman was aware, that jury trial was not conducted in the same manner in all countries. In Scotland, for instance, the jury consisted of fifteen men, and a *majority* was sufficient to convict. As a mere touchstone of truth, this was a better mode than ours. But the spirit of civil liberty had given value to the rights and lives of the citizens, and unanimity in the jury trial was resorted to as a safe-guard against oppression. Mr. T. concluded, by repeating that his amendment ran in the very words employed in the Constitution of the United States.

Mr. Giles said, that he was constrained by a sense of duty, to offer some remarks on this subject—he should gladly be silent, but could not dispense with the obligations his duty imposed upon him. The gentleman from Fauquier, (Mr. Scott,) had considered a Judge impeached before the Senate, as a criminal on trial before a court. There was the greatest dissimilarity imaginable between the two cases. In the first place, the two bodies were not organized alike. The office of a jury was to try the facts charged—and though they rendered a general verdict, including both fact and law, yet the court alone was properly the judge of the law. If the principle of unanimity, therefore, was relied on, it ought to be unanimity among the members of the court. But, who ever heard of perfect unanimity's being required among the Judges? The only exception was that in the case of the slave; and that he considered as one of the highest honors of Virginia, among the many honors she had enjoyed. In the trial of a poor abject slave, the law made the court the "next friend" of the slave, to procure him counsel, and then it required absolute unanimity among his Judges. But in that case, there was no jury—the court performed the duty of both judge and jury. Another distinction was, that a Judge before the Senate, was tried in his political, not in his personal capacity; but, a man on trial before a court, was tried personally, in his private character as a man, let him happen to hold what office he might. Here, then, was a Judge, or other officer of the Commonwealth, (for both the clause and the amendment applied to others as well as Judges, though this seemed to be forgotten,) who holds a distinguished situation under the State. He receives honour, and he receives money for rightly performing the duties of it; and the question was, whether he should retain that honour, and continue to receive the money of the public, against the will of other than two-thirds of the entire number of the Senate, before whom he had been impeached? Whether all absent votes were to be thrown in his favour? To him it was a perfect novelty; and it would have been the *invention* of this body, if all absent votes, with or without the will of the voters, were to be thrown into the scale of the accused.

The court and jury acted on one uniform principle throughout the country: but when an officer of high trust was to be tried, in all the other States, two-thirds of the members present were held sufficient to convict—that number was never transcended. He said it was a novelty: he asked for any precedent of the like: he demanded any similar case that would serve to justify such a proceeding.

Mr. G. said, it was a matter of real sorrow and affliction to him to differ from gentlemen for whom he had such very high regard, and to differ from them so radically as he did in this matter. But, he must obey the dictates of his reason and conscience; and when these guides taught him that a particular course was right, he could not surrender that conviction to please any man. He was never more fully and thoroughly convinced on any subject: and when he had as a precedent the practice of all the world with him, his convictions were confirmed beyond the possibility of doubt.

He had had some experience on this subject—and it convinced him, that if two-thirds of the entire number of both Houses of the Legislature should be required, the rule would be extremely awkward and clumsy in practice, and no test of responsibility at all. A man was accused, and not a step could be taken in issuing the accusation, without an unanimity of two-thirds of the body that was to try him. A thousand perplexing questions would arise; and if in any case, one more than one-third disagreed with the rest, the proceedings could not go on. The greatest difficulty might be experienced in getting through even the initiatory steps of such a prosecution. Nothing was more difficult than to conduct a process under such a rule. The advantages on the side of the accused would be immensely great.

Mr. G. said, he had had no idea, when they were called with this, as one main object in view, to provide a means of making Judges responsible for their conduct in office, that the Convention, instead of that, would go beyond all former beings that ever existed in the world—beyond all human tribunals, in making Judges secure against all responsibility.

They declared, that the Legislature might remove Judges—but how? By means which rendered it next to impossible. If they succeeded, it must be by the merest chance in the world. How should they appear before the world? How must they appear before themselves? For his part, he had rather see the whole clause stricken out. He had rather gentlemen should go back at once, and tell their constituents that as to removing Judges or punishing them, it was out of the question—they were responsible to nothing and nobody, but God and their own consciences.

Mr. Colalter said, that to hear the arguments on this question, it would seem to a by-stander, that Judges were the only persons impeachable under the clause. He could wish gentlemen had taken in the Governor as well as the Judges, in their arguments, as a Governor might possibly be impeached some day or other. He was afraid the House might vote with an eye to the Judges only. He believed, that members of the Legislature too might often be impeached, or at least impeachable. He could relate a fact that had some bearing on this latter point. He had once been asked by a member of the Legislature, if he was willing to go to Hell? He had answered, yes, if he was sure he could get back again without being scorched. The member had then taken him to a cellar, at the door of which he gave a pass-word, and they entered. After descending a flight of steps, they came to another door—the pass-word was given again—they again descended—other doors were opened—and at last, they got down to Hell itself, sure enough. There he saw a faro-bank, and members of the Legislature at play. Now, the Legislature had declared, that to keep a faro-bank, or play at one, was a Penitentiary offence. Now, he asked whether a Judge would not be impeached, if it were known that he did such things? And why members of Assembly were not impeachable for the same offence? He thought it probable they should have some offenders for the Senate to try. Hitherto, Judges had been responsible only to God and their own consciences, but in future it was not to be so. The Scripture declared, that a man could not serve two masters; that a man could not serve God and Mammon. Now, he believed, a man could not serve God and the Legislature of Virginia—he could not certainly please both. But where a man's treasure was, there would his heart be also—and as the Judge's treasure would be at the mercy of the Legislature, he supposed that his heart would be in the Legislature also. He concluded, by expressing his hope that gentlemen would vote with a view to all *future* Judges, not to all *past* Judges.

The question was now taken by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Giles, Dromgoole, Tyler, Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Trezvant, Randolph, Venable, Holladay, Mercer, Osborne, Powell, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Tazewell, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Bayly and Perrin—55.

Noes—Messrs. Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Alexander, Goode, Marshall of Richmond, Nicholas, Clopton, Johnson, Mason of Southampton, Claiborne, Urquhart, Leigh of Halifax, Logan, Madison, Stanard, Fitzhugh, Henderson, Cooke, Griggs, Mason of Frederick, Pendleton, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Loyall, Prentis, Grigsby, Branch, Townes, Pleasants, Massie, Bates, Neale, Rose, Colalter, Joynes and Upshur—41.

So the amendment prevailed, and the Convention agreed that two-thirds of the members *present* in the Senate, were competent to convict an officer impeached before that body.

Mr. Stuart now moved to amend the twenty-eighth section, which reads as follows: "XXVIII. Judges may be removed from office by a concurrent vote of both Houses of the General Assembly; but two-thirds of the whole number elected to each House must concur in such vote, and the cause of removal shall be entered on

the Journals of each. The Judge against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon;" by striking out "elected to," each House, and inserting "of the members of" each House.

Mr. S. explained the object of his amendment in a few words, and observed, that as it stood, the article would be inefficient in practice, as eleven men in the Senate would control the proceedings, and prevent a conviction.

Mr. Scott said, that all the amendments offered, and all the arguments advanced to support them, seemed to be based on the supposition that every officer against whom any charge was prosecuted must be guilty as of course, and the main point to be attained was a facility in convicting him: it did not appear to have occurred to the gentlemen that an accused man might be innocent, and nobody seemed to be at all anxious about placing any guards against the innocent.

Mr. Giles said, that to his mind the course pursued seemed directly the reverse. Gentlemen who were for throwing these multiplied, these unheard-of guards around the Judges, seemed to be conscious that they were guilty, and must be shielded by all possible means: so they had barricaded them on every side, till conviction was impossible.

The question was at length taken on the amendment of Mr. Stuart, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Taylor of Chesterfield, Giles, Dromgoole, Alexander, Goode, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Randolph, Leigh of Halifax, Mercer, Osborne, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Gordon, Thompson, Massie, Bayly and Perrin—52.

Noes—Messrs. Leigh of Chesterfield, Brodnax, Marshall of Richmond, Tyler, Nicholas, Clopton, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Logan, Venable, Madison, Stanard, Holladay, Fitzhugh, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Pendleton, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Pleasants, Bates, Neale, Rose, Coalter, Joyner and Upshur—43.

So the amendment was agreed to.

Mr. Garnett moved to amend the twelfth section, by striking out all that related to admitting housekeepers and heads of families to the Right of Suffrage.

He declined going into any discussion of the subject, it having been already fully argued: all he purposed was to make one more, and the last trial, to have this feature erased.

But the hour being late, (past four o'clock,) the House agreed to postpone the consideration of Mr. Garnett's amendment until to-morrow: and then adjourned.

FRIDAY, JANUARY 8, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Sykes of the Methodist Church.

A memorial was laid before the Convention by the President from Alexander Smyth, as follows:

To the Convention of the Commonwealth of Virginia, the Memorial of Alexander Smyth represents:

That he has seen a copy of an amended Constitution, proposed by a Committee of your body, in which is the following clause: "No person shall be eligible to the office of Governor, unless he shall have attained the age of thirty years, shall be a native citizen of the United States, and shall have been a citizen of this Commonwealth for five years next preceding his election."

Your memorialist was born in a small island in Europe, called on maps Rathlin, by some writers Ratherin, and celebrated as the asylum of Robert Bruce; he was brought to Virginia a child in 1775, and bred in that Commonwealth; he was a member of the Legislature of Virginia in 1792, 1796, 1800, 1804, 1805, 1806, 1807, 1808, 1816, 1827, and is now serving his eleventh session as a member of the Congress of the United States, from Virginia.

Your memorialist has no desire to fill the office of Governor of the Commonwealth of Virginia; but he would feel aggrieved by an enactment declaring him (who has been fifty-four years a citizen and inhabitant, and is the grand-father of sixteen native

Virginians,) ineligible, especially when it is to be declared that a native of New Orleans or Pensacola, born and bred under the Spanish Government, and who may have resided in Virginia five years, shall be eligible.

Your memorialist considers that all those who were born British subjects before the revolution, and became citizens of the United States by that event, whether born in Europe, the West Indies, or in the North American Colonies, have equal rights; they are natural born citizens, and not naturalized citizens.

Your memorialist requests a re-consideration of the said clause; and that it may be amended, so as to save the equal rights of citizens who became such by the revolution, wherever born.

Which is respectfully submitted.

ALEXANDER SMYTH.

On motion of Mr. Summers it was laid upon the table.

The Convention then proceeded to the unfinished business of yesterday, which was the consideration of the amendment proposed by Mr. Garnett, viz: to strike out in the twelfth article of the draughted Constitution, the clause which extends the Right of Suffrage to housekeepers and heads of families.

Mr. Fitzhugh proposed to amend the amendment by striking out the same words, and inserting in lieu thereof a different proposition.

The question then recurring on the motion to strike out, simply,

Mr. Powell asked a division of the question on striking out and inserting; when, after a short conversation, Mr. Fitzhugh withdrew the amendment.

Mr. Wilson said, that he should vote against the motion; but should it prevail, he should then move to insert an amendment, which he read in his place.

Mr. Mercer expressed his hope that none of those who approved of the clause as it stood, would be induced to vote to strike it out, from any hope that either of the propositions which had been read could possibly carry. That movement had been tried with respect to the Executive Council, and had resulted only in a ten days' discussion.

The question was then taken by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Fitzhugh, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Griggsby, Branch, Bates, Neale, Rose and Coalter—40.

Noes—Messrs. Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Clayton, Saunders, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Joynes, Bayly, Upshur and Perrin—55.

So the House refused to strike out the clause extending the Right of Suffrage to housekeepers and heads of families.

Mr. Claytor moved to amend the section by striking out the words "who for twelve months next preceding has been a housekeeper and head of a family," and inserting the words "who has resided" within the county, city, town, borough, or election district, where he may offer to vote.

Mr. Leigh said, if this amendment should prevail, it would be better at once to strike out the entire section, and insert this clause alone: because it conferred Universal Suffrage.

Mr. Stanard said, this proposition went beyond all that had yet been offered. A man might become a resident the day before the election, and would by this be entitled to vote.

Mr. Claytor said, that such had not been his intention: he was willing to restore the words "for twelve months next preceding."

Mr. Powell moved to amend the amendment by inserting "two years" instead of "twelve months."

Mr. Claytor accepted this as a modification.

Mr. Stuart moved to amend the amendment thus modified, by adding "and who has been the son of a freeholder" within the county, &c.

A conversation now ensued, in consequence of the absence of several members from indisposition, which resulted in a permission for them to vote to-morrow on any questions which should be put to-day.

The question was then put on Mr. Claytor's amendment, and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington,

Byars, Cloyd, Chapman, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Clayton, Saunders, Cabell, Stuart, Gordon, Thompson, Joynes, Bayly and Upshur—43.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Erodnox, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Baldwin, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Fitzhugh, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Massie, Bates, Neale, Rose, Coalter and Perrin—51.

Mr. Cooke then, after a few prefatory remarks, explaining why he offered his proposition at this moment, moved the following to be added to the draught of the Constitution, to be inserted after the fourth, as a fifth article :

“It shall be the duty of the Legislature to re-apportion, once in ten years, to wit, in the year 1841, and every ten years thereafter, the representation of the counties, cities, towns and boroughs of this Commonwealth, in both of the Legislative bodies ; provided, however, that the number of Delegates from the aforesaid four great districts, and the number of Senators from the aforesaid two great divisions respectively, shall neither be increased nor diminished by such re-apportionment. And when a new county shall hereafter be created, or any city, town or borough, not now entitled to separate representation in the House of Delegates, shall have so increased in population as to be entitled, in the opinion of the General Assembly, to such representation, it shall be the duty of the General Assembly to make provision by law for securing to the people of such new county, or such city, town or borough, an adequate representation. And if the object cannot otherwise be effected, it shall be competent to the General Assembly to re-apportion the whole representation of the great district containing such new county, or such city, town or borough, within its limits ; which re-apportionment shall continue in force until the next regular decennial re-apportionment.”

Mr. Cooke expressed his hope, that a provision of this kind might reconcile some to the present arrangement of representation, when they found that there was a possibility of having any injustice under which they might labour, in consequence of the apportionment by the Committee, remedied by a re-apportionment of their division of the State after ten years.

Mr. Summers said, if the amendment of the gentleman from Frederick, (Mr. Cooke,) had contained a provision for future equalization of the Representatives among the four districts of the State, as well as an authority to equalize within those districts, he should have gladly given it his support. While the amendment looked to the perpetuity of the present distribution as between the different quarters of the Commonwealth, he could but esteem it as utterly valueless, if not injurious. It gave countenance and confidence, he thought, to the continuation of the present unequal distribution, and might in its tendencies exclude the hope of justice with reference to the future. With those impressions on his mind, and in furtherance of that anxious desire which he felt for the adoption of a rule for future apportionments, which would secure to the people of the West in some degree the benefits which ought to result to them from the accessions of numbers, wealth, and public contributions in that quarter of the State, he should offer a substitute for the gentleman's additional article. Mr. S. said, his rule for future apportionment had the advantage of avoiding all the contested rules heretofore proposed. It equally departed from white population and Federal numbers. It looked to the class which many gentlemen here regard as the only safe depositories of the sovereign power—the freeholders ; and proposed to equalize representation in the future according to the number of the resident owners of the soil, in the different quarters of the State. To avoid the objection which had been urged as to what was here called nominal freeholders, he proposed that those only should be computed who resided on the land by virtue of which they voted ; or, who residing in some one of the counties should own therein a freehold estate of the value of \$25. In submitting this proposition, he was aware that it gave the West less than its proper representation, but it approached that desirable result, and would he hoped be received as it was proposed, in a spirit of concession and compromise. He then submitted the following substitute for Mr. Cooke's fifth article :

“For the purpose of future apportionments of Senators and Delegates, the General Assembly shall cause registers from time to time to be formed, of the freehold voters in the several counties, cities, towns, and boroughs, in which shall be ascertained the number of qualified freehold voters in each, residing on the land in virtue of which such right is founded ; and also the number of qualified freehold voters not residing on the land in right of which they vote, but whose freehold estate therein shall be of the assessed value of twenty-five dollars and upwards : That in the year 1835, and every tenth year thereafter, it shall be the duty of the General Assembly to re-apportion the Senators and Delegates among the several counties, cities, towns, and

election districts, as nearly as may be, in proportion to the registered freehold voters in each, without dividing counties in the formation of election districts; but no re-apportionment of Senators shall go into operation but as succeeding elections shall take place."

Mr. Cooke explained. He had not offered his plan as doing justice to the State, but as mitigating the injustice of the arrangement, which had been agreed upon, by remedying county inequalities, *within* the four divisions of the Commonwealth. He should have offered some such plan as that of the gentleman from Kanawha, but he feared it could not succeed. He was contented to take what he could get, and not lose that, by reaching after what was unattainable. He should, however, vote for the gentleman's proposition.

Mr. Leigh observed, that the proposition of Mr. Cooke, went on the principle which had been adopted by the Convention, and only carried it out, so as to remedy inconveniences and inequalities in the detail. He considered the plan of Mr. Summers, as virtually the same as that which had been offered by Mr. Stuart, and rejected by the House. All who were in favour of the draughted Constitution, would vote against it.

Mr. Stuart said, the gentleman was mistaken, if he supposed this to be the same with the plan he had offered. He preferred the plan of Mr. Summers, to that of Mr. Cooke—because the former respected the whole Commonwealth; whereas the latter established four different Commonwealths, and did not prescribe what should be the principle of apportionment, even in them.

Mr. Cooke denied that his proposition *established* these four Commonwealths: it found them established by a vote of the Convention; and it only remedied the evils they must otherwise suffer.

Mr. Summers in reply, remarked that the gentleman from Chesterfield, (Mr. Leigh,) had been as unfortunate in supposing the plan of future apportionment, which he (Mr. S.) had submitted, was in substance that of the gentleman from Richmond county, as he had been in the first instance in regarding it as the counterpart of that of the gentleman from Patrick, (Mr. Stuart.)

The proposition of the gentleman from Richmond county looked to re-apportionment only in the House of Delegates; the one under consideration embraced both branches of the Legislature—That plan proposed an enumeration of freeholds of twenty-five dollars only—this contemplates all freeholds without regard to value, where the freeholder resides on the land, and refers the value to those only which are not occupied by the owner. If, said Mr. S., the freehold qualification is as gentlemen contend, the only safe, and satisfactory evidence of that common interest which ought to give the elective franchise, he hoped it would be accepted as the proper criterion for apportioning the political power. If it was true that the sovereignty ought to reside with the freeholders, it must be equally true that they ought to hold it in equal portions, and that representation ought to be regulated by their numbers. He rejected the opinion that it would operate to prevent the acceptance of the Constitution by the people, and contended that the strongest ground of opposition would be the want of some provision accommodating the future representation to the varying condition and situation of the people, and securing to them equal weight in the Government: That nothing would form so strong an incentive to their acceptance, as a provision approximating an equality of representation hereafter.

As to the objection founded on the inequality of this rule, as applicable to different portions of the State, he thought the gentleman from Loudoun (Mr. Mercer) as well as some others had overrated it. The registered freeholds certainly would not be found to give precisely the same results every where, but he had examined the probable effect which this rule would have on the four divisions of the State, by the few lights which offered themselves with reference to this enquiry; and he would place before the House the facts which he had examined, and the conclusions to which they conducted. The number of votes on the question of "Convention," or "No Convention," in 1823, were 38,533—apportioning representation in the different districts according to the votes then given, would in a House of Delegates of one hundred and twenty-eight members give to the

Western District,	-	37
Valley, -	-	23
Midland, -	-	36
Tide-water,	-	32

In the same year an animated election took place for electors of President of the United States, at which was given throughout the Commonwealth, 38,719 votes—Apportioning by this manifestation of the freehold strength in the different districts, the representation would be for the

Western District,	-	-	31
Valley, -	-	-	25
Midland, -	-	-	40
Tide-water,	-	-	32

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A comparison of the votes given on the two occasions shewed, that the West had taken the deepest interest, and given the largest vote on the first, and the East on the second, and taking the two elections together, and their combined results as giving the relative number of freeholders, which he thought might safely be admitted, an apportionment founded on this average would give to the

Western District,	-	-	34
Valley, -	-	-	24
Midland, -	-	-	38
Tide-water,	-	-	32

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He combated the hypothesis of the gentleman from Albemarle, (Mr. Gordon,) who had contended that freeholds were necessarily larger in districts where slaves were held in great numbers, than where the ground was tilled by white persons. He insisted that in the grazing districts, where pasturage furnished the principal profits, the freeholds must necessarily be larger than in the planting or farming country, and that where slaves constituted the labouring class, a greater proportion of the free population would be found owners of the soil, than in a community where the labour was performed by hired white men. In the first the labourers were in addition to the white community, in the latter they were a part of it.

Mr. S. expressed his anxious desire for the adoption of some satisfactory rule of future apportionment, with which he believed the people would accept the Constitution—and urged the acceptance of the one which he had offered, as forming a just medium between the contested claims of the two sides of the Convention, and the true half-way house where all might amicably meet in concord. Concessions were demanded, and no man felt more disposed to make them, provided they were mutual; and he sincerely hoped that his proposition would be found acceptable to a majority of the House. He asked for the ayes and noes.

Mr. Mercer said, that nothing but the most imperious sense of duty could induce him for one minute to retard the dissolution of that body. He had risen to express his regret, that he was unable to vote for the scheme of his friend from Frederick: his objection to it was, that it went to perpetuate the dividing lines which separated the State into distinct parts: besides, should the amendment of the gentleman from Frederick succeed, instead of having an apportionment for the present, and leaving the rest to futurity, it presented the idea to the people that they were to have a perpetuity of the injustice which the present apportionment inflicted upon them.

It might possibly recommend the Constitution to the adoption of some of the large counties which expected hereafter to be sub-divided, but this consideration would be very limited in its extent. The effect upon the entire West would be to produce utter hopelessness of any effectual remedy for the evil they complained of, and must thus seal the fate of the new Constitution. It would give him pleasure if he could vote for the plan of the gentleman from Kanawha; but the plan would operate so unequally that it was out of his power. To shew this by one example: the votes according to the gentleman's plan would be nearly equal in his own district to what they were in the Bedford district, and the Pittsylvania district: though the two latter now gave 2700 each, while the Loudoun district gave less than 1300.

Mr. Cooke said he was surprised to find that he was again charged with perpetuating injustice by his scheme.

Mr. Mercer said the gentleman had not originated the injustice, but his scheme went to give it perpetuity.

Mr. Cooke said, he had given it no perpetuity: the injustice would be just as perpetual without his scheme as with it. The only difference between his plan and that now in the Constitution was, that the latter went to perpetuate the injustice within the great districts as much as it did between one of those districts and another; whereas his went to remedy the injustice as between county and county *within* those districts. The principle from which the general injustice flowed was already adopted, and settled by a distinct vote of this body, and it had by that vote been rendered perpetual: all he did was to mitigate its operation in detail.

Mr. Gordon said, he should vote for Mr. Cooke's amendment, and against that of Mr. Summers. He saw in the former a spirit of conciliation: it went to relieve sectional inequalities, and thus tended to bring about those results of harmony which every friend of his country ought to desire. The inequalities within the separate divisions of the State being local and county questions, would involve the same diffi-

culties or produce the same sort of excitement as had been encountered in the present Convention, where the great opposing interests of the whole State were in conflict. But the plan of the gentleman from Kanawha set the whole question of representation again afloat: it would operate most unequally in practice. The freeholds were necessarily larger in a great slave-holding district than in a district of the same extent, inhabited wholly by a white population: in this respect, the plan would bear hardly on the lower country; and particularly in his own district, which was largely interested in slave property.

Mr. George rose to congratulate the gentleman from Albemarle on his happy disposition, which enabled him with such perfect ease to change his sentiments to suit every new posture of affairs. When that gentleman had first appeared in the Convention, nothing would suit him but a basis of free white population: the gentleman would not so much as listen to any thing but the white basis. Now, he was most anxiously engaged in guarding the slave-holding portion of the State. The gentleman's one, and only object seemed to be to guard his own proposition; and he turned for or against any measure proposed, just as it threatened to affect that proposition. He had risen expressly with a view to congratulate the gentleman, which he did most heartily, on this his happy disposition.

Mr. Gordon said, that he utterly denied and repudiated the unfounded imputation of the gentleman from Tazewell. He had changed none of the opinions he had brought with him to that Convention, in relation to the proper and just basis of representation. He had contended from the first, and he had never retracted the position, that white population was the true basis. He still held that sentiment. He wished it had been in his power to congratulate the gentleman from Tazewell, on his disposition for conciliation and compromise. For his own part, he did not profess or desire an incapacity to receive light from argument, especially argument so able as such as was heard in that assembly. He never had considered wisdom to consist in a dogged obstinacy, that persevered against every consideration of policy and all the force of reason. The gentleman's charge gave him little concern: his withers were unwrung, nor should he have felt the gibe at all, save in the unkind spirit which it betrayed.

Mr. Campbell of Brooke said, that if he had been put to the torture to devise a mode of perpetuating the injustice done by the present scheme of apportionment between the Eastern and Western portions of the State, he could not have invented a more effectual one than that which had been proposed by the gentleman from Frederick, (Mr. Cooke.) It forever precluded (so far as that word could be applied to human things) all hope of any redress of existing grievances. The only hope of such relief consisted in this, that the plan would operate so unequally within the four great divisions of the State, that it would at last produce some sympathy for the unjust treatment of the Western part of the State. As to present justice, the hope had been completely cut off; and their only resort was the hope that the plan could be found to operate so unfairly and so oppressively, that others would be induced to co-operate with them in obtaining redress: if the plan did not operate so, they could have no prospect of obtaining allies to their cause from other parts of the State. This measure would go far to destroy that hope; and conceiving it to be thus hostile to the interests of the West, he should vote against it.

Mr. Randolph said, that as at present advised, he should vote for the proposition of the gentleman from Frederick; and for what appeared to him to be the plainest of all possible reasons. Two alternatives were presented to them: the one was, should the apportionment proposed by the Select Committee, if it should be agreed to by the House—be unchangeable? or, if in practice it should be found to prove unequal, should it be modified by the Legislature in such a manner as might suit the circumstances of the country? The measure, as he had understood it, did not involve the question as to the perpetuity of that plan of apportionment which had been agreed upon as a compromise, by the two sides of the House: it had nothing to do with it. Let that proposition be withdrawn altogether, and where was any thing in the Constitution which warranted a change in the apportionment? One thing was sure; the County of Loudoun would be secure in her three Delegates, *ad indefinitum*. Loudoun, Frederick and Shenandoah were sure of their three portions of the public estate *ad indefinitum*. If there was any perpetuity in the matter—that was the perpetuity. He had been sorry when the House had devolved upon the Select Committee a task that could be better performed by the House of Burgesses. They could make an apportionment among the counties and Senatorial districts, that would suit much better than any the Convention were likely to agree upon. Was it not obvious that without some such proposition of that of the gentleman from Frederick—supposing the report of the Committee to be adopted by the Convention, and their apportionment to stand—that the great and wealthy counties of Chesterfield, Caroline, Spotsylvania and Southampton, (not to enumerate others) would stand to Loudoun as one to three? He had not the returns of the Auditor before him, and could not refer to figures; but

he was very sure there was no sort of principle which could justify the perpetuation of this monstrous, this crying injustice. He charged nothing against the Committee: he did not doubt they had done their duty in a spirit of the utmost fairness, and had given to the subject their best attention. But, was there any comparison between the wealth, and the contributions to the Treasury, of Caroline and of Loudoun? Was there any gentleman who could pretend to deny, that that of Caroline was as one while that of Loudoun was as three?

Mr. R. said, he could see no reason for the preference of the three counties which had been singled out, or why they should have three Delegates, when such large, opulent, and highly respectable counties as those he had mentioned, were confined to one. Compare the county of Chesterfield—taking in its mineral treasures—and would not its average value be equal to that of Loudoun? He did not know any such very great obligations they were under to Loudoun; except one—and that he should carry in his memory to the grave—it was the county which gave the only vote in Virginia for the elder John Adams against Mr. Jefferson. It had endeavoured to extend the reign of terror to the people of that Commonwealth—and it did hope that a little heaven would have leavened the whole lump: but Loudoun had been mistaken.

Mr. R. said, however, that he should not vote for Mr. Cooke's proposition in any hope of perpetuating the blessed new Constitution. He could not say to that instrument in the words of Father Paul, *esto perpetua!* But his wish was for the shortest possible life to it. He did not vote to perpetuate the monstrous injustice done by the present apportionment of political power. He should vote for it, in order that the injustice of to-day might be rectified hereafter, by the House of Delegates, among the same great portions of the State as were at present designated. He believed gentlemen might discharge all fears of perpetuating the mischief of the proposed Constitution. That was his only consolation: no—it was not his consolation: he had no consolation: for he perceived that from that day forth there was to be nothing safe—nothing permanent in their institutions.

Mr. Cooke repeated his purpose to vote for the amendment of Mr. Summers, and his fear that the attempt of that gentleman would prove abortive. As to the objection of the gentleman from Brooke, (Mr. Campbell,) it was not surprising that that gentleman should be opposed to his proposition if he held such opinions. The gentleman had openly avowed his desire, that the Constitution, which had been agreed upon by this body as a desirable compromise between the great and opposing interests, might be rendered as odious as possible. It was very natural, that with this motive confessed, the gentleman should be hostile to a plan whose whole end and purpose was to remedy injustice and to allay discontent.

Mr. Leigh said, he had been mistaken in supposing the amendment of the gentleman from Kanawha to be the same with that offered formerly by the gentleman from Patrick, (Mr. Stuart.) It was the same, or nearly so, with that of the gentleman from Richmond county, (Mr. Neale.) The details of that plan had been examined by the gentleman from Fauquier, (Mr. Scott,) and its great inequality, and the strange and capricious results to which it led in practice, had been forcibly exposed by that gentleman. It produced great injustice as between the great districts of the State, and yet greater between county and county. Any one would be satisfied of this who should apply the plan to Albemarle and then to Orange.

Mr. Neale expressed his astonishment at hearing the gentleman from Chesterfield assimilate the present scheme to that he had had the honour to offer. No two things could be more unlike. This was merely the shadow of his. They had three essential points of difference. The plan of Mr. Summers proposed a re-apportionment every ten years, his every twenty years. The one reckoned all the freeholds; the other all the freehold-voters resident in the county: the one had a Senate that was to be re-apportioned every ten years: the other a permanent Senate of nineteen East and thirteen West of the Blue Ridge. Were these not essential differences?

Mr. Massie observed, that so much had been said both here and elsewhere, about the change of opinion and change of course of the Albemarle Delegation, that he felt it incumbent on him to explain the vote he meant to give. He had altered no opinion, he had changed no course in relation to this matter. In his address to his constituents previous to the election, he had declared he would vote for no Constitution, which in his judgment might expose the country East of the Blue Ridge to the risk of oppressive taxation. He had expressed sentiments on other matters of reform, but they were all subject to the controul of this cardinal pledge; a pledge, not asked at his hands, but insisted on by him as a guarantee for his own liberty of action. He would not now trouble the Convention by going into further detail, but in self-defence he felt himself bound to say, that he held it to be perfectly consistent for him to vote against the resolution of the gentleman from Kanawha, and to support that of his colleague from Albemarle.

Mr. Mercer said, that the direct allusion which had been made to his county, occasioned him now to rise, and to say, that he had not had the remotest reference to the al-

lotment of representation to Loudoun, within his view—nor could he—for that allotment was not yet agreed upon. What he objected to, in the plan of the gentleman from Frederick, was the perpetuating of the division of the State into four great districts—its shutting out the hope of change, till 1841, and its allowing a farther decennial apportionment. The people would not consider the Constitution, as fixing on only a temporary apportionment. If the Constitution should succeed at all, it would only be from viewing the whole together, and considering that though the allotment of power at present was unjust, yet there was hope for the future: but this would not be their view, if provision was thus to be made for applying the present allotment for centuries to come. If this allotment was to be regarded as perpetual, he called gentlemen to look at it: what great changes must have occurred in the state of the population since 1820, when the Census was taken in which this allotment proceeded. The plan of the gentleman from Frederick, would destroy that hope, which alone would induce a great part of the people to accept the Constitution. As to the obligations of the Commonwealth to Loudoun, he should not pretend to compare them with those it owed to the county of Charlotte. Loudoun needed not his defence: she would be judged by her own merits. He had not had Loudoun in his thoughts when he stated his objections to the plan of the gentleman from Frederick: As to her three Delegates, it was perfectly in the power of the House to take one of them away and give it to some other county, if they should judge the apportionment of the Committee unjust. He had endeavoured to shew the difference between the technical fact that the Constitution did not fix this inequality within the districts, and its establishing an unequal ratio between the districts themselves.

Mr. Stanard protested against the assumption of Mr. Mercer, that Mr. Gordon's compromise was based on the white population of 1820. He renounced any such basis, and utterly disclaimed having supported such principle. He commented with severity upon the argument of Mr. Campbell, who objected to the plan of Mr. Cooke, because it took away the aliment from discontent, and healed the evils which time might disclose. That gentleman wished to sow the seeds of discontent so thickly, that they might soon vegetate, and produce a new Convention.

To prevent these discontents would, it seemed, rob the gentleman and his friends of a formidable ally! Was this a fit principle for the Convention to act upon? Was this a fit argument for the Convention to hear? An open avowed war was to be waged against the institutions of the State. Mr. S. then referred to the first difficulties of the Convention, the compromise which had terminated them, and the salutary effects likely to flow from the adoption of Mr. Cooke's proposition.

Mr. Randolph said, that the Convention, if it had done him the honor to pay attention to what he had said when last up, would do him the justice to recollect, that he had entered into no comparison of Loudoun with Charlotte. The gentleman from Loudoun had said, that he should not do so—in which determination, he admired the gentleman's discretion full as much as he did his valor. For if he had chosen, instead of looking at the counties of Caroline—he remembered the time when Caroline paid a larger contribution to the Treasury, and owned more slaves than any county in the Commonwealth—Spottsylvania and Southampton, he might with propriety have said, that the grossest injustice had been done to Charlotte, who, with more than half the population of Loudoun, and much more than half the amount of taxes, with an amount of productive labour in still greater proportion, and with exports, he would venture to say, of equivalent value—received an allotment of one Representative, while Loudoun received three. But, he had said nothing about Charlotte. He was not in the habit of always talking of himself and his own concerns—he had said nothing about his wish to get a tenantry for his great estates in Charlotte, and his anxiety to induce them to come out of Maryland and Pennsylvania for that purpose, by getting the Right of Suffrage extended. He might have compared Pittsylvania and Halifax, and shewn that they were as well entitled to three Delegates as Loudoun. With the gentleman from Spottsylvania, (Mr. Stanard,) he disclaimed and denied the apportionment of the Committee to have been founded on the white population of 1820, or on white population in any shape. Before he sat down he would say farther, that the county of Fauquier was as much entitled to have three Representatives as the county of Loudoun. He had risen before to state the reason why he should vote for the amendment of the gentleman from Frederick, (Mr. Cooke.) It was because it would enable the Legislature at short periods to remedy this gross and monstrous and crying injustice—yes—crying injustice—that the county of Caroline should have but one Representative. Let gentlemen look at the wealth and character of that county—let them measure her dimensions—one of the great and opulent counties of Virginia—that Caroline, and Southampton, and Chesterfield, and Pittsylvania, and all that range of counties through which the great Southern and Western road passed—should have but one Delegate each, while three counties in the Western part of the State should have three each—it was most unjust. He saw, too, that in all the changes made by the Committee in their second apportionment, the

whole weight of increase was to be thrown into the scale of the North-Western corner of the State. This was aggravating the injustice.

Mr. Mercer said, he rose rather to shew the justice of his former argument, than to notice the personalities of the gentleman from Charlotte. The argument of the gentleman from Spottsylvania was, that the alliance of the enemies to the present apportionment, would be prevented by the amendment of the gentleman from Frederick, by re-apportioning the representation within one of the great divisions of the State, so as to remedy inequality. Mr. M. denied this consequence—for, by that plan, the discontent that might have been transferred to one county, or to a few counties, would thus be spread throughout the division of the State to which those counties belonged: all which must be affected by a re-apportionment. It was the very essence of the system, to create an *esprit du corps* in each of those divisions. There was no need of this. It would be easy to adopt the present apportionment in substance, without thus classing the counties of the State. Those divisions ought to be obliterated—they belonged to the land-law of 1807—and when the ends of that law ceased, the division ought to have ceased also; but, the mode of proceeding in the Convention was calculated to keep them up, and to render them perpetual. The plan of the gentleman from Frederick, instead of *allaying* discontent, went to *diffuse* discontent—to make the discontent of one county the discontent of the Valley. He trusted he had thus vindicated his argument as to the attack of the gentleman from Spottsylvania.

The gentleman from Charlotte had forgotten a part of his own remarks. He should be the last man in that House wantonly to injure the feelings of any gentleman, and he believed he had never done so. The gentleman had not been content with saying that Loudoun was not entitled to three Delegates—that he had a perfect right to say if he thought so—and on the gentleman's principles, he presumed he very honestly thought so. But, he had no right to refer to the political history of Loudoun. Her rights to representation did not depend on that history. The gentleman had said he admired his discretion as much as his valor. He was sorry he could not admire, in that gentleman, either.

[Mr. R. I should be sorry, very sorry, if you did admire me.]

Mr. George said, that the gentleman from Albemarle had said he wilfully shut his eyes against the light.

The Chair interposed. The gentleman had not used such an expression.

Mr. Gordon. I said no such thing. I said I did not consider it a virtue, or a proof of wisdom, to refuse to listen to reason, or admit light for argument.

Mr. George replied, that if the gentleman meant that remark to apply to him, he was mistaken. He had been disposed to conciliate: but when he saw gentlemen professing to do only what was just, opposing every plan that would make the Constitution suitable to the wishes of the West, it was a matter of astonishment to him. He had hoped the plan of his friend from Kanawha would have made the unjust apportionment of the gentleman's compromise in some degree less unpalatable to the people of his part of the State; but it seemed that no plan whatever for future apportionment, could suit the gentleman from Albemarle. Nothing would do but his own unjust and unequal scheme of compromise.

Mr. Gordon replied. He regretted that the gentleman from Tazewell should find it necessary, in order to vindicate his own course, to charge a dereliction of duty upon others. The duties of the Convention had been arduous enough—none could expect to carry just such a Constitution as pleased himself. If he had the writing of one for himself, he might possibly have produced something that would have suited the gentleman better: but he found the Delegates of all Virginia assembled, and he thought the spirit of conciliation becoming and commendable. On the point of consistency, he might challenge gentlemen who accused him. He had advanced but one proposition—and if he had manifested some degree of parental love toward it, the fact was not so very unusual. Yet some gentlemen, who had been great sticklers for the *white basis* had been willing to consent to a basis, including three-fifths of the black population. They had assented to, and had themselves moved for, a mongrel Senate; and the unsullied beauty of the white basis had been given up by *them*, when *he* alone had stood out in its favour. He meant no imputation on their conduct—he knew that they had done it in the spirit of compromise. But he should be obliged to the gentleman from Tazewell, if he could propose some scheme that would unite the votes of gentlemen in its favour.

Mr. Summers briefly explained his plan in reply to Mr. Neale—shewing that it did not apply to the freeholds of non-residents, but only of such as resided within the county where the land lay. He professed his desire to see the Constitution adopted; and it was with a view to produce that effect, he had offered his plan. He went into some statistical details, to shew that his scheme was a just medium—a half-way house between the Federal numbers and the white basis.

He could not vote for Mr. Cooke's plan, because he believed that no Constitution, without a plan for future apportionment, could ever be adopted by the people.

The question was now taken on Mr. Summers' amendment to the amendment of Mr. Cooke, and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Saunders, Stuart and Upshur—40.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Harrison, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Claytor, Branch, Townes, Cabell, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly and Perrin—55.

So the amendment to the amendment was rejected.

Mr. Powell now moved the following amendment to that of Mr. Cooke:

"In the year 1842, and every ten years thereafter, the General Assembly shall have the power to apportion the representation of both branches among the several counties, cities and boroughs of the Commonwealth, according to some just and equitable ratio."

The question was taken by ayes and noes, without debate, and decided as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders and Cabell—38.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Baldwin, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Henderson, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—57.

Mr. Stuart said, he could not vote for Mr. Cooke's amendment, unless some basis was specified for the apportionment. He believed the Committee had gone on the principle of Federal numbers. Now, he wished to know if that was to be brought into the great districts of the State among the counties? The arguments that applied as between district and district, would not apply as between county and county. Where their interests were the same, the white population was the just basis. He therefore moved to amend Mr. Cooke's amendment, by inserting after the word "representation," these words, "on the basis of white population."

The question was taken by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, and Thompson—46.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—49.

So the amendment was rejected.

Mr. Summers said, that he despaired of any adjustment of the question of future apportionment, on principles which would give to the West the benefit of its future increase in numbers, wealth or contribution. That the proposed Constitution contained many valuable provisions, which he was satisfied the people of that country would gladly accept, if they could be separated from the obnoxious arrangement as to the representation. The provisions as to the Executive and Judicial Departments met his approbation. The extension of the Suffrage he regarded as a valuable improvement, and he should regret the rejection of what he esteemed important alleviations, by their connection with what he was satisfied the Western people ought never to accept. In utter hopelessness of any rule of future apportionment, he had become convinced that

next to some satisfactory rule upon that subject, it would be best to leave representation in principle, where the Convention had found it; best to secure the beneficial provisions which had been agreed upon, and leave to the future the adjustment of those questions upon which no satisfactory decision could now be had.

The proposition which he offered would give an Eastern majority of twenty-nine, in a House of Delegates of one hundred and eleven; but it would leave the question of representation open to future examination, without prejudice; all parties would be remitted to the ground which they respectively occupied before the assembling of this body, and it would place them in a situation to accept the amendments without reference to the rights which would be postponed. To the Eastern country the proposition particularly addressed itself, and he submitted it to gentlemen from that quarter of the State to decide, whether the interests of all would not be more fully consulted by forming a Constitution upon the old principle of representation, than by pertinaciously adhering to one that is extremely inconvenient to them, and peculiarly obnoxious to their Western fellow-citizens. As to the Senate, he said he offered no new rule—that body had been apportioned in 1817, according to white population, and he proposed the application of the same principle for the future. A restraining clause as to new counties was added to quiet Eastern fears against the multiplication of counties in the West—a restraint perhaps unnecessary with reference to a body composed as the House of Delegates would be.

Mr. S. then submitted a substitute for Mr. Cooke's proposition, going to establish an equal county representation.

Mr. Stuart moved that it be laid on the table and printed: but the motion was negatived.

Mr. Moore moved that both the amendments of Mr. Cooke and Mr. Summers, be indefinitely postponed.

On this motion Mr. Summers demanded the ayes and noes, but after some conversation, he agreed to withdraw his amendment for the present, and let the question be taken on that of Mr. Cooke.

Mr. Moore thereupon withdrew his motion for indefinite postponement.

Mr. Naylor briefly expressed his reasons for voting against the motion of Mr. Cooke: it was a palliative, not a radical cure. It prevented the hope of any future apportionment different from the present.

The question was now taken on Mr. Cooke's amendment, by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Laidley, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—56.

Noes—Messrs. Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell and Stuart—39.

So Mr. Cooke's amendment was adopted.

Mr. Summers now moved to strike out the third and fourth clauses of Mr. Cooke's amendment, and insert the following:

"One of which shall be called the House of Delegates, and shall consist of one Delegate to be chosen annually, for and by each of the counties of the Commonwealth; one Delegate to be chosen for and by the city of Richmond; one Delegate to be chosen for and by the borough of Norfolk, and one Delegate to be chosen for and by each of the towns of Petersburg, Lynchburg, Winchester and Wheeling. That whenever the General Assembly shall create a new county, such county shall elect and choose one Delegate; but no new county shall be hereafter created of less territorial extent than five hundred square miles, or of less population than fifteen hundred persons.

"The other House of the General Assembly shall be called the Senate, and shall consist of thirty-two members; of whom fourteen shall be chosen for and by the counties lying West of the Blue Ridge of mountains, and eighteen for and by the counties, cities, towns and boroughs lying East thereof; and for the election of whom, the counties, cities, towns and boroughs, shall be divided into thirty-two districts, as hereinafter provided. Each county of the respective districts, at the time of the first election of its Delegate under this Constitution, shall vote for one Senator, and the sheriffs or other officer holding the election, for each county, city, town or borough, within

ten days at farthest, after the last county, city, town, or borough election in the district, shall meet at some convenient place, and from the polls so taken, in their respective counties, cities, towns and boroughs, return as Senator, the person who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be divided into four classes, and numbered by lot—at the end of one year after the first election, the eight members elected by the first division shall be displaced, and the vacancies thereby occasioned, supplied from such class or division, by new election, in manner aforesaid. This rotation shall be applied to each division, according to its number, and continue in due order annually. And for the election of Senators, the counties of The General Assembly shall, whenever it may become necessary, re-apportion the Senators, by changing the number to be elected East and West of the Blue Ridge of mountains, but no such re-apportionment shall take effect, but as succeeding elections shall take place, and in all such re-apportionments, the former classification shall be preserved, or a new classification made, as the Legislature shall find most convenient."

By desire of Mr. Summers, the question was first put on striking out only the third clause of Mr. Cooke's, and inserting in lieu thereof so much of the above amendment as relates to the House of Delegates.

Mr. Morris demanded that the question be divided, and taken first on striking out. It was so divided, and put accordingly, first on striking out.

Mr. Nicholas explained, at considerable length, his reasons for opposing the amendment of Mr. Summers. It seemed to address itself to the smaller counties and held out a boon to each. He contended that it was unjust to give Warwick and Loudoun an equal representation. This was the very inequality the Convention was called to remedy. But the scheme looked to the increase of voters by the extension of the Right of Suffrage; and the effect would be to agitate the State to a far greater degree than ever, and the result was to be another Convention. The scheme was easily seen through, but he could never consent to it—he would give no pledge to vote for the Constitution: but if he did, it would be as a compromise; but this plan took away all the security of Mr. Gordon's, and gave nothing in exchange.

Mr. Tyler said, he had risen for the purpose of recommending the ancient and respectable borough of Williamsburg to the protection of the gentleman from Kanawha. (Here Mr. Summers bowed respectfully.) If the gentleman offer a boon to his district, he ought to extend that boon to the whole of his constituents. If any were to go by the board, many would have to go by the board, and they would have at last the consolation of much good company. Mr. Tyler said, he believed, if the gentleman would remove one feature from his amendment, about the quantity of land in a county (a provision which seemed intended for the West alone,) and would agree to include the ancient and respectable borough of Williamsburg in his plan, he did not think he should be such an obdurate heathen as to refuse the gentleman's boon. It had been forcibly remarked by the gentleman from Charlotte some days ago that he doubted if the Convention could do better by way of amending the Constitution, than to reduce the House of Delegates one-half, and after a few small alterations respecting the Judiciary, to turn their backs upon that Hall. And if the gentleman from Kanawha would extend his kindness to Williamsburg, in all human probability he might, after a little time allowed him for reflection, assent to accept that power which they had exercised, (he trusted without injury) for more than fifty years. They were at present fully contented—they asked for no change on earth—least of all for such an one as the honorable gentleman from Kanawha had in an earlier stage of the proceedings designed for them.

Mr. Summers observed, in reply, that he had all the inducements that could well operate on his mind, to gratify the wishes of his honorable friend from Williamsburg, or near it. He had a favourite measure to carry, and a trifle ought not to separate him from a gentleman so highly respectable, and whose vote might exert a powerful influence over others. But as that gentleman was yet in doubt, and had not been able to make up his mind definitively, he hoped to be pardoned for pausing until he received fuller assurance of the course which he might ultimately take. Mr. S. could not consent to restore to the ancient Capital of the Commonwealth its pristine honors, while its Representative remained undecided as to the acceptance. His friend from Richmond, (Mr. Nicholas,) had perceived a lurking design to carry a scheme for future representation by calling Convention after Convention. That gentleman he knew had very keen vision, and he would not undertake to compete with him in estimating the chances of bringing about any particular political measure; his optics were not fitted for such scrutinies. He believed, for his part, that the people of Virginia had been pretty well dosed with Conventions for the present, and that it would be some time before they would call another; neither the "wisdom of the State," or its practical good sense, he thought, would be shortly called upon for such a purpose;

yet time, the great innovator, he hoped would ultimately bring justice and peace to every portion of the State.

Mr. S. said, that if his proposition was regarded as a boon offered to any part of the State, he begged gentlemen to carry with them the recollection, that it was not proposed by him as matter of choice, but as the dictate of necessity, that to secure the ratification of such parts as were valuable, he was induced to relinquish what was unattainable in the proposed plan of a Constitution.

As to the danger which the gentleman from Richmond thinks he perceives in the proposition as to new counties, Mr. S. observed, that it could but excite his surprise. *Danger to the East* by this limitation of the power of creating new counties, was to his mind inexplicable, when it stood in connection with an Eastern majority of twenty-nine, in a House of Delegates of one hundred and eleven members, with the exclusive power of originating laws! But he remarked, that he would leave this question of Eastern interests to be settled by the gentleman from Richmond and his constituents.

Mr. Cooke said, he did not pretend to fathom, or to judge, the motives of the gentleman from Kanawha, but the effect of his amendment would be to frustrate the labors of three months, by ensuring the rejection of the Constitution. Nothing could more certainly ensure the unanimous and indignant rejection of the Constitution by the whole Western country (unless where the gentleman's personal influence might extend.) His plan gave a greater majority to the East by fifty per cent. than that to which he objected. Yet this was a *Western* plan, brought forward by a *Western* man!

Mr. Sumners remarked, that he was not a prophet or the son of a prophet, but if any weight was to be attached to his opinions, he could assure the gentleman from Frederick, (Mr. Cooke,) that the proposition just submitted would secure a larger vote than the one supported by him throughout the entire country from the Blue Ridge to the Ohio river, and would tend to the adoption of the Constitution in that part of the State: That if the extreme West was capable of yielding to interested considerations, equal county representation would be a favorite plan, as that mode of apportionment gave a larger representation to that district, than the one which received from that gentleman such zealous support. Mr. S. disclaimed any design to frustrate the labors of the Convention. He most sincerely desired to give such form to the proposed Constitution as would secure a majority in its favor here, and of the people; and notwithstanding the gentleman's apprehension of an indignant rejection if the proposed amendment should succeed, Mr. S. took occasion to assure him, that without relying on personal influence, (of which he had none to boast,) he was entirely willing to confide the merits of the respective propositions to the good sense and discrimination of the Western people, with a full conviction that they would accurately decide on the conduct and motives of all those to whom they had confided their interests here.

Mr. S. observed, that before he closed, he would avail himself of the occasion to remark, that whatever of responsibility might be attached to the proposed amendments, he claimed it entirely as his own; he had consulted no one, he had not submitted it to the inspection of a single member before offering it to the House, and that all he asked in its favor was a calm and dispassionate examination, and the votes of such as approved its principles.

Mr. Mercer, after disclaiming any belief that the gentleman would offer a proposition which he thought injurious to the West, declared himself unable to vote for it. He would vote for striking out, but not for inserting.

Mr. Henderson said, he rose to congratulate the House on the restoration of the long-lost harmony between the county of Kanawha and the ancient county of Charles City, [from which Mr. Tyler comes.]

The question was now taken on striking out the third section of Mr. Cooke's amendment, and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Saunders and Stuart—37.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Moore, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Henderson, Cooke, Boyd, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Claytor, Branch, Townes, Cabell, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—58.

So the motion was negatived.

Mr. Sumners then withdrew the residue of his amendment.

[The rest of the day, till near five o'clock, was occupied in discussing the apportionment of representation among the counties in the southern part of the State.]

The debate, though very animated, was wholly local in its character, and for more reasons than one, we abstain from giving any report of it. Only two votes were taken: one for attaching the county of Pocahontas to the Botetourt Senatorial District: and the other for taking a Delegate from the county of Brunswick, and giving it to the county of Franklin.

[As soon as the result of the vote was announced for transferring the double delegation from *Brunswick* to *Franklin*, Mr. Brodnax rose to move, that one Delegate should be taken from Loudoun, (she being allowed *three*,) and given to Brunswick; both these counties being in the same section. Mr. Leigh of Chesterfield warmly supported this proposition; but the Convention adjourned before taking the question on it.]

The House adjourned at 5 o'clock.

SATURDAY, JANUARY 9, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Smith of the Methodist Church.

The House was again engaged in the consideration of the general subject of the apportionment of representation among the several counties and Senatorial districts of the State. The same reasons which induced us to pass over the debate which occurred on this subject on Friday, apply to the debate of to-day, and will prevent us from entering fully into its minutiae. It partook, as all debates of this kind usually do, of much warmth—great interest in the parties immediately concerned, and some approaches to personality; which latter, however, were promptly arrested and repressed by the Chair.

But the interest of such scenes is confined to those whose local interest happens to be upon the carpet: much that is said relates to dry statistical details; a comparison of the population, white and coloured, of the several counties; their extent of territory; their relative contributions to the Treasury; their local connexions with the counties adjacent; or their geographical position in reference to the whole State; the change that will be occasioned by attaching them to this or to that Senatorial district; the justice of the apportionment proposed for them by the Committee; all questions in which the general reader feels little or no concern, and readers at a distance none at all. Even the Convention itself became wearied and disgusted with the contest; and it was with the utmost exertion that the Chair was able to confine their attention to the persons addressing it. Under these circumstances, our readers will thank, rather than censure us, from sparing them the copious detail.

Mr. Neale brought forward the following proposition: The first proposition made, partaking more of a general character, entitles the debate on it to a more expanded report:

Resolved, That the counties of Richmond, Lancaster, Middlesex, Matthews, Charles City and New Kent, be assigned one Delegate each, and no more.

Resolved, That there shall be *three* more Delegates assigned to the district next above the head of tide-water, and distributed in such manner as a majority of the Delegates from that district in Convention shall report to this House.

There shall be two more Delegates assigned to the Valley district to be disposed of in the manner last aforesaid; and

There shall be two more Delegates assigned to the trans-Alleghany district, to be disposed of in the manner directed by the second resolution."

Mr. Neale in support of his proposition, addressed the Convention as follows:

Mr. President: The gentleman from Southampton has withdrawn the amendment proposed by the member from Dinwiddie: I am glad of it; for though Franklin county did, on yesterday, capture a Delegate belonging to Brunswick, I should be sorry to see Brunswick on a crusade this morning, with a view to make reprisal. I hope, Sir, that the proposition which I am about to offer, will supply the demands of such counties as complain of the report from the Select Committee. I propose, Mr. President, to increase the House of Delegates ten members—to give to the counties of Charles City, Middlesex and Lancaster one member each, which they have not by the said report—to equalize the political power in the other great sub-divisions of the State, by assigning three members to the third district; by which Brunswick may get one; and two members to each of the districts beyond the Blue Ridge.

I am well aware, Sir, that there is a feeling here much opposed to a large House of Delegates; and I acknowledge that I strongly participate in that feeling, and am willing to indulge it, when it will not occasion too much sacrifice of counties, respecta-

ble both for their population and for the amount of taxes which they pay. The reasons why I deem my proposition ought to prevail, I will briefly state.

Under the report for apportionment, every county, yes, Sir, every county in the State, *has at least one* Delegate, except ten counties lying between James River and Potomac River. I do not ask that each of these counties shall have a Delegate. No, Sir, we *must* agree that four of the smallest counties and the city of Williamsburg, ought to claim but two Delegates—this is submission and sacrifice enough. But we claim, we ought to claim, that the six counties, to wit: Charles City, New Kent, Middlesex, Matthews, Lancaster and Richmond, should have a Delegate each. They have by the report but three among them all—they now pay an average amount of taxes of \$1726 each—and they ask an addition of three members—the expense will be very trifling when compared with the amount of taxes which each pays. It can hardly be supposed that the Legislature will remain in session hereafter more than six or seven weeks—then say:

45 days at \$4 per day,

Allow for travelling,

180

50—\$230

So that each member will cost \$230; and the whole increase of expense for the ten members will be \$2,300 only. After the expenses of a member be deducted, there will remain \$1,496 in the Treasury from each of the counties for which I am now seeking to obtain representation.

The claim which I set up must be considered reasonable and proper, when you reflect upon the great satisfaction and delight which it will afford to the counties I have named, besides answering the demands in other parts of the Commonwealth.

Mr. President, I cannot see why the three counties which I claim representation for, should not be gratified. Sir, is not the disfranchisement, the political death of four counties and one city, sufficient to stay the ruthless hand of innovation? Will you persist to add three more counties, ancient and honourable as they are? Remember your forefathers landed there—it was there that your hardy and valorous ancestors first implanted civilization in this western hemisphere; and from which effort sprung this mighty empire, filled with happy millions!

Do not gorge the large counties with Delegates and leave the smaller ones to starve by not increasing the House ten more Delegates.

Sir, for some one or two centuries these very counties sustained your Government both colonial and republican by their full share of contribution both in money and in men, whilst they have never asked, nor received any benefit from the lavish appropriations of the public treasure.

It may be objected, that according to the population of the said counties, they have their full share of representation. That may be so—but suppose we do ask representation over and above the *precise quantum* according to population? Can we of the East, can you of the West object? Has it not been argued over and over again upon this floor, that where there existed identity of general interests, county representation should prevail over representation upon population, unless there was a disproportion most manifestly unreasonable. These counties do not come within the influence of the exception—no ill whatever can arise from the indulgence I ask, and by granting it, you will have done justice—consulted county pride, county prejudices, and county virtues.

I am well assured, Mr. President, that this House is impatient to close its labours; therefore, I will conclude. But I do hope that this desire may not prejudice my proposition; if it should, or any other cause, I shall be gratified in the reflection that I have performed my duty in my best way.

Mr. Leigh said, he hoped the proposition of the gentleman from Richmond county would not prevail. It would be remembered, perhaps, by some gentlemen that he had formerly said the most convenient number for the House of Delegates would be one hundred and forty-six. He had fixed on that number in reference to the desire which gentlemen manifested to have each of their counties represented, if possible. But it was impossible to meet the wishes of all. To do that, one representative must be given to each of the very smallest counties in the State: and then the very large counties claiming a representation in proportion, the result would be not a *diminution*, but a considerable *increase* of the present number of the House of Delegates. He prayed gentlemen to consider the fairness of the claim which such counties as Shenandoah and Fauquier might advance, if such counties as Richmond, Lancaster and Charles City, were to have one Delegate a piece. The very attempt at equalizing the representation on such a scheme must of necessity overturn the whole plan reported by the Select Committee, and open the entire field of contest anew. It had been represented to the Select Committee by their respected and venerable Chairman, (Mr. Madison,) upon his personal knowledge, (and he hoped that gentleman would pardon him for adverting to the fact) that one favourite object of the people of Virginia in calling the present Convention, had been to reduce the number of the House of Delegates, if possible, to one-half of what it now stood at. And thereby to avoid

not only the expenditure of a great deal of money, but what was of still more consequence, a great deal of the time now consumed by the deliberations of that body. The Committee had cheerfully yielded to this suggestion, and had so reduced the number as to meet that object, so far as it was practicable in consistency with other valuable objects. Then what was the ground of complaint on the part of the gentleman from Richmond?

Mr. Neale here interposed. He had uttered no complaint whatever. He was well aware the Select Committee had done their best, under the very difficult circumstances in which they were placed. He had not made, or insinuated, any complaint against them.

Mr. Leigh said, that he was fully aware of this: he had used perhaps too strong a phrase; but he had employed the word complaint in its general sense as an objection. What reasonable objection, he asked, could the gentleman urge against the arrangements of the Committee? His plan might, no doubt, give some content to his own district, and to a few others in the like circumstances. But what could the gentleman himself say, to shew that such counties as Westmoreland, King George, Lancaster, Richmond and Charles City, with a population of from 5 to 6,000, should have each a Delegate, when counties, such as Caroline, Chesterfield, Hanover, Spotsylvania and Southampton, with 14, 15, and 18,000, were to have no more than one? What did he suppose the people of these large and wealthy counties would say to this? He appealed to the candour, the good sense and the justice of the gentleman from Richmond county, to say whether he believed—whether it was reasonable to expect, that they would yield to those small counties a larger representation unless their own was increased? They had not yielded even to the plan proposed by the Committee from any sense of imperious *justice* in the case, but from a feeling of generosity toward the smaller counties in the ancient portion of the Commonwealth. Nothing but such a feeling would have reconciled them to things even as they stood by the Committee's report. When the local and comparative claims were fairly examined, the real question would be found to be not whether the small counties should get more, but whether the odd Delegate in the number assigned, should not be taken from Prince George and Surry, and given to Caroline and Chesterfield. He hoped the proposition would not prevail.

Mr. Neale said, he should be glad to see the House of Delegates reduced to one hundred and twenty, but that would not be practicable, if justice was to be done to the smaller counties. But it would be found, that those counties averaged a contribution in taxes to the amount of \$1,726, while the pay and mileage of a Delegate would come to but \$220. He hoped the Convention would so far indulge them as to add ten to the proposed number of the Lower House. The gentleman from Chesterfield insisted, that if the small counties were to be thus indulged, then Chesterfield and Caroline would each be entitled to two Delegates. But had it not been urged in argument throughout the debate, that where there was a complete identity of interest between the counties, there was no necessity of adhering, with rigid strictness, to a proportional distribution of representation? He had himself voted repeatedly on that principle. He knew the Committee had disposed of the one hundred and thirty-two Delegates in the fairest possible manner. He had no complaint on that subject. All he asked was, that the number might be raised to one hundred and forty-two; and then there would still be a reduction in the number of the House of seventy-two members.

Mr. Nicholas said, that the proposition went to give his own district one additional member; and therefore, if the question were an insulated one, as a Representative of that district, he should, of course, be disposed to gratify the wishes of the mover. But it was necessary to look at other considerations. All must see the great embarrassment that would result from disturbing the arrangement of the Committee. He was strongly impressed with the truth and justice of the remarks of the gentleman from Chesterfield, that if this measure should carry, great injustice must be done to the larger counties, unless the House of Delegates should be greatly increased, instead of being reduced in number. He was against disarranging the whole plan of distribution adopted by the Committee. On that principle, he had yesterday voted against taking a Delegate from Brunswick, and giving it to Franklin. He thought it was better to put up with a partial inconvenience, than throw the Convention upon the ocean of contending claims. He should still act on that principle—and should, therefore, vote against the proposition. Each gentleman naturally sought to advance the interests of his own part of the State; but nothing could be done unless they were resolved to act in a spirit of compromise.

He referred to the case of Brunswick and Franklin, to shew the difficulty of any new arrangement—and expressed his belief, that should he vote for the present amendment, he should, in the end, injure the interests of his district, by unhinging the arrangement of the whole subject.

Mr. N. referred to the great length of time already consumed, and the discreditable spectacle exhibited by the Convention, in contending thus for local interests

merely. After disputing and discussing the principle of representation, and at length agreeing on a compromise, would it not be disgraceful to wind up in a mere county scuffle? He saw distinctly, that the plan of the gentleman was impracticable; or if not so, to be attained only at the expense of heart-burnings and resentment in various parts of the Commonwealth. He should, therefore, though with reluctance, be obliged to vote in the negative.

Mr. Tyler said, that some of the remarks of his colleague had been such as to require him to make a very few remarks in reply, as he intended to vote the other way. If he saw that such a result could possibly follow, as his colleague seemed to apprehend, he should certainly be one of the last men, one of the very last, to vote in its favor—and if it could be demonstrated, that such was to be the result, he should abandon the scheme with promptitude. But did the proposition do injustice to any part of the State? Did it interfere with the great plan of apportionment, which settled the relative representation of the four great divisions of the State? Did it deny any thing to the middle country? To the Valley? Or to the trans-Alleghany district? Was it not a perfectly fair and just apportionment? Pray what cabalistic force was there in that mystic number one hundred and thirty-two? If the principle adopted by the Convention was preserved, how, in the name of all that was just, could this arrangement merit censure or complaint? Did they not allow to others the same thing which they claimed for themselves? He was not, however, pertinacious in favour of the plan, but he wished to vindicate himself from the charge of injustice. It was natural, that he should desire to see the system of county representation adopted. He had from the first kept that plan in his eye as the just plan. He had always desired a graduated system on the county principle. He had never asked, however, that the large counties should be shorn of their representation—he was for according to all their own favourite views. There was a perfect identity of interest between the large counties and the small ones. Charles City and Chesterfield acted in the same spirit, and had the same interests and aims. The Delegates from one would speak the interests of the other. They all had one common cause. If, then, the arrangement would be attended with no injurious consequences, why should this boon be denied to counties which had existed for one hundred and fifty years? A wise Statesman would consult the feelings, and even the prejudices of those for whom he was providing a Government, and would seek to bind the people together by one indissoluble cord. Why, then, violate the feelings of the people, who had enjoyed a representation for two hundred years, and in search of a mathematical exactness, (which, after all, could never be attained,) deprive Richmond and Lancaster of all voice in the public offices? With the utmost disposition, he doubted not, on the part of the Committee to do justice, they had caused his district to embrace no less than seven counties and one borough, while in the Senatorial district, they would utterly be silenced by Henrico and Richmond City. They had united York to Accomack. Though Accomack was able to swallow York alive, she could have no voice in the Legislature, save by the mere grant and good pleasure of Accomack and Northampton. Charles City, James City and New-Kent, would be silenced by the voice of Richmond and Henrico. He did not urge this in the spirit of complaint—and he candidly acknowledged that he had himself been able to devise no better scheme. But, he used these facts as an argument to shew that the number of the House of Delegates ought to be enlarged. He asked gentlemen to give them a real representation in that House, and not in mere pretence. He urged not the slightest imputation against the Committee—they had acted with the most perfect candour and frankness. On the contrary, he would go into an eulogium of their many virtues, did he not know it would be disagreeable to them to hear it. He threw himself on the spirit of liberality and of justice, which he knew to exist in that Convention. He had voted in favour of giving a Delegate to Franklin, not on the claims of some gentlemen as to principle, but because he looked to a scheme that would produce peace. He was not for taking a Delegate from Brunswick, or one from Loudoun, but for so far increasing the number of Delegates as to do justice, if possible, to all parts of the State.

The question was then taken on Mr. Neale's proposition, and decided by ayes and noes as follows:

Ayes—Messrs. Tyler, Clopton, Mason of Southampton, Claiborne, Henderson, Cooke, See, Neale, Joynes, Bayly, Upshur and Perrin—12.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Nicholas, Anderson, Coffin, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Trezvant, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, Doddridge, Morgan,

Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Rose and Coalter—83.

Mr. Massie moved a re-consideration of the vote by which a Delegate had been taken from Brunswick and given to Franklin—and then the whole battle which had been fought yesterday, was fought over again with renewed ardour.

Mr. Stuart opposed the motion, and expressed his surprise at the attempt. Mr. Randolph supported the motion. Mr. Townes replied to Mr. Randolph. He was succeeded by Mr. Stuart, who declared that if the injustice was done of depriving Franklin of the Delegate, he could not support such a Constitution. Mr. Dromgoole thanked the gentleman from Nelson, (Mr. Massie,) for making his motion, and supported at some length the proposition. He concluded with saying, that whatever menace the gentleman from Patrick might throw out about not voting for the Constitution, all he could say was, that he hoped the Convention would do justice, whatever be the vote of any particular person for or against the Constitution. For himself, he would make no such pledge—throw out no such menace.

Messrs. Claytor, Cabell and Saunders, supported the claims of Franklin.

Mr. Claiborne supported the claim of Brunswick.

After a long and animated debate, the motion for re-consideration was carried by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Griggs, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Branch, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—49.

Noes—Messrs. Anderson, Coffin, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Chapman, Mathews, Ozlesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart and Thompson—45.

Mr. Townes now moved, that Loudoun be placed among the counties which have two Delegates, and Franklin retained in that list, the Delegate taken from Loudoun being given to Franklin. This motion brought new troops into the field, and the contest was renewed with great spirit, but it issued in a very decided rejection of the measure proposed.

On a suggestion from Mr. Townes,

Mr. Stuart withdrew his motion, upon an understanding that he would renew it hereafter.

Mr. Townes then moved to strike *Loudoun* out of the counties which had been assigned *three* Delegates, in order to give *one* more to Franklin. He supported this proposition by a speech.

When the motion was announced, Mr. Stuart stated, that he did not know the motion which his colleague meant to make—that he would not be the means of doing injustice to one county, (Loudoun,) to do justice to Franklin—that he thought Loudoun fairly entitled to three Delegates.

Mr. Henderson supported the right of Loudoun to three Representatives, upon any test which might be laid down—and he laid down several tests for this purpose, as white population, tax-paying people, fighting people, &c. &c.

Mr. Randolph supported the proposition—declaring that he was opposed to allowing any county in this district three votes—particularly while so many other great counties, as Spotsylvania, Caroline, and others, have only one Delegate.

Mr. Henderson replied.

Mr. Leigh spoke in favour of the proposition.

Mr. Mercer spoke at great length in favour of the claim of Loudoun to three Delegates.

Mr. Nicholas also supported the claims of Loudoun.

After some discussion between Messrs. Stuart and Townes, Mr. Fitzhugh rose to ask if there was no way of putting an end to this interminable spirit of debate.

The Chair replied, that he had looked into this subject, and could not satisfy himself that there was any other rule than the good sense of the House.

Mr. Cabell spoke in opposition to the motion of his colleague, (Mr. Townes.)

Mr. Scott supported the proposition, to take a member from Loudoun.

The ayes and noes were as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Mason of Southampton,

Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Rose, Coalter and Perrin—37.

Noes—Messrs. Marshall of Richmond, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Joynes, Bayly and Upshur—58.

Mr. Stuart now renewed his motion, going to give an additional representative to Franklin at the expense of Brunswick. It was put in the form of striking out the latter and inserting Franklin.

Mr. Brodnax opposed the proposition—and urged that the report of the Select Committee should remain undisturbed, and regretted that the Convention, on whom the eyes of the civilized world are fixed, should exhibit the example of a body whose members were huckstering for power. He spoke at great length.

Mr. Saunders supported the proposition.

Mr. Dromgoole demanded a division of the question; in consequence of which it was first put on striking out, and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Scott, Green, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart and Thompson—49.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—46.

So Brunswick was stricken out. Franklin was then inserted by the following vote:

Ayes—Messrs. Barbour, (President,) Marshall of Richmond, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Randolph, Logan, Madison, Stanard, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Taylor of Caroline, Morris, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Doddridge, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Loyall, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Bayly and Upshur—72.

Noes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Tyler, Mason of Southampton, Trezvant, Claiborne, Urquhart, Leigh of Halifax, Venable, Holladay, Roane, Garnett, Tazewell, Prentis, Grigsby, Joynes and Perrin—23.

Mr. Naylor moved to transfer *Hardy* from the Senatorial district of Shenandoah, to the district of Rockingham and Pendleton.

Mr. M'Coy said, he presumed the motion was only a spice of party politics. [The Chair called to order.] He then went into the argument to show that Hardy was the natural ally of Shenandoah, not of Rockingham.

Mr. Naylor said, the political idea had never struck him before; but since the ingenuity of the gentleman had suggested it, he began to think there was something in it. And was that gentleman himself actuated by that consideration? But if Hardy was to be punished for her political sins, he hoped she would not be attached to the car of Shenandoah: [The Chair called twice to order.] Mr. Naylor said, he should not have made such remarks, if the gentleman, who has so long been in public life, had not set him the example.

Mr. Anderson said, that Hardy was the natural ally of Shenandoah—but to allay the fears of the gentleman, he would promise him that she would always be represented in the councils of the country by a republican of the old school.

Mr. Smith obtained the floor to offer some other change—but owing to the lateness of the hour, he declined pressing his proposition at the present sitting, and moved an adjournment: which motion succeeding by a small majority, the House adjourned.

MONDAY, JANUARY 11, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

Mr. Smith of Greenbrier, moved an amendment to the report of the committee on representation. It proposed to detach Greenbrier county from the Senatorial district of Monroe, Giles and Montgomery, and attach it to that of Alleghany, Bath and Botetourt.

The county contest was now commenced afresh, and continued without intermission, till near five o'clock in the afternoon.

After a discussion, in which the motion was advocated warmly by the mover, and by Messrs. Cloyd and Chapman; and opposed by Mr. Beirne and Mr. Miller, the question was decided by ayes and noes as follows:

Ayes—Messrs. Marshall of Richmond, Tyler, Nicholas, Clopton, Coffman, Williamson, Baldwin, Moore, Smith, Madison, Stanard, Mercer, Osborne, Cooke, Griggs, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Summers, See, Wilson, Green, Campbell of Bedford, Claytor, Saunders, Branch, Townes, Stuart, Thompson, Coalter, Bayly and Upshur—40.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Anderson, Harrison, M'Coy, Beirne, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Holladay, Fitzhugh, Henderson, Powell, Naylor, Donaldson, Roane, Taylor of Caroline, Morris, Garnett, Laidley, Morgan, Campbell of Brooke, Barbour of Culpeper, Scott, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Joynes and Perrin—51.

Mr. Claytor moved the following:

To strike out the following clause: "The counties of Bedford and Franklin, shall form another district: the counties of Buckingham, Campbell and Cumberland, shall form another district: the counties of Patrick, Henry and Pittsylvania, shall form another district: the counties of Halifax and Mecklenburg shall form another district: the counties of Charlotte, Lunenburg, Nottoway and Prince Edward, shall form another district: the counties of Amelia, Powhatan and Chesterfield, and the town of Petersburg, shall form another district: the counties of Brunswick, Dinwiddie, Greensville and Prince George, shall form another district: the counties of Isle of Wight, Southampton, Surry and Sussex, shall form another district: and the counties of Norfolk, Nansemond and Princess Anne, and the borough of Norfolk, shall form another district."—And substitute the following:

"The counties of Patrick, Henry and Franklin, shall form another district: the counties of Pittsylvania and Halifax, shall form another district: the counties of Bedford and Campbell, shall form another district: the counties of Mecklenburg, Charlotte, Lunenburg and Nottoway, shall form another district: the counties of Prince Edward, Buckingham, Cumberland and Powhatan, shall form another district: the counties of Amelia, Chesterfield, Prince George, and the town of Petersburg, shall form another district: the counties of Brunswick, Greensville, Dinwiddie and Sussex, shall form another district: the counties of Surry, Isle of Wight, Southampton and Nansemond, shall form another district; and the counties of Norfolk, Princess Anne, and the borough of Norfolk, shall form another district."

He supported the amendment at considerable length—and it was farther advocated by Messrs. Saunders and Stuart; and opposed by Messrs. Brodnax, Branch, Randolph, Martin, Venable and Giles; when the question being taken, it was decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Summers, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Stuart and Thompson—43.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Laidley, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—51.

So the amendment was negatived.

Mr. Morris moved an amendment which went to add Caroline to the list of coun-

ties entitled to two Delegates, and advocated his motion at length ; but consented to withdraw it at the request of

Mr. Leigh, who moved an amendment going to increase the House of Delegates to one hundred and thirty-nine : giving two more to the trans-Alleghany district, (viz : one to Wythe and one to Montgomery,) one to the Valley (to be disposed of among themselves, perhaps to Augusta,) two to the Middle district, (viz : one to Brunswick, and the other probably to Louisa,) and two to the country on tide-water, (viz : one to Caroline, and one to Chesterfield.)

Mr. Nicholas and Mr. Morris expressed their approbation of this plan.

Mr. Powell wished the Valley to have one more Delegate, in which case he should vote for it.

Mr. Leigh could not consent to this, as it would mar the proportion already fixed by the Convention.

Mr. Stanard suggested, by way of reconciling the difference, to give one Delegate to Fredericksburg.

The plan was advocated by Messrs. Gordon and Neale : Messrs. Claytor and Scott opposed it.

Mr. Madison, though in favour of reducing the number of Delegates as far as convenient, gave his assent to the plan, in the hope that it would produce an arrangement more acceptable both to the Convention and to the people.

The motion was opposed by Messrs. Claytor and Scott ; and decided by ayes and noes as follows :

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Moore, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Madison, Henderson, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Mathews, Green, Tazewell, Loyall, Prentis, Grigsby, Townes, Martin, Pleasants, Gordon, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—45.

Noes—Messrs. Barbour, (President,) Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Beirne, Smith, Miller, Baxter, Logan, Venable, Stanard, Holladay, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Chapman, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Marshall of Fauquier, Campbell of Bedford, Claytor, Saunders, Branch, Cabell, Stuart, Thompson and Massie—49.

So the plan of Mr. Leigh was rejected.

Mr. Morris now renewed the motion for his amendment, giving two Delegates to Caroline, by taking one from the Northern Neck.

Mr. Naylor called for a division of the question, (viz : first on striking out.)

Mr. Neale regretted these family divisions, which were springing up among them, and particularly that the gentleman from Hanover was seeking to get a Delegate for his county at the expense of his district. For his own part, Mr. N. said, he regarded the Select Committee as an impartial umpire—they had given their award—and he did not think it right to disturb it, unless corruption could be proved in its proceedings.

Mr. Coalter opposed the motion : He said he went upon no other basis than the basis of the Select Committee. He hoped its report would not be disturbed.

Mr. Morris again withdrew his amendment to make room for another, read by Mr. Miller, as follows :

“Strike out the counties of Brunswick, Caroline, Montgomery and Wythe, respectively, from among the counties to which one Delegate each is allotted, and insert them in their proper places among the counties to which two Delegates each are allotted.”

Mr. Leigh moved to amend the amendment of Mr. Miller, by inserting after Caroline the county of Chesterfield.

The motion was carried : Ayes 47, Noes 45.

Mr. Fitzhugh moved further to amend by inserting “Fairfax.”

The motion was opposed by Mr. Mason of Southampton, and negatived.

Mr. Smith moved further to amend by inserting “Greenbrier ;” but this motion was also negatived.

The question was now taken on Mr. Miller's motion and negatived, (that gentleman saying, that as the object of his motion was defeated he should now himself vote against it.)

Mr. Morris now offered, for the third time, his amendment, for inserting Caroline, but it was negatived.

Mr. M. said, that he should be the last man to charge the report of the Select Committee with corruption, attending to Mr. Neale's jocular and technical remark, but he alleged that it might be set aside, as other awards for *obvious mistake* on the face of it.

Mr. Mason of Southampton, moved to transfer Prince George from the Brunswick Senatorial district, to the district of Isle of Wight. It was agreed to.

Mr. Goode now moved that Brunswick and Montgomery should receive one Delegate each, and for that purpose the number of the House of Delegates should be increased from one hundred and thirty-two to one hundred and thirty-four. As one reason for this motion, he produced a letter from the Auditor of Public Accounts, stating that even upon his own principles of calculation, there was a mistake in estimating the population of Brunswick by 2,000 white population short.

Mr. Mathews moved to add Wythe and Chesterfield.

After a debate in which Messrs. Brodnax, Scott and Chapman took part,

The question was divided on Mr. Powell's motion, and put separately on Wythe, and then on Chesterfield; but both were negatived.

The question respecting Brunswick and Montgomery (which had technically been proposed in the form that they be stricken out of the list of counties having one Delegate and inserted in that of counties having two,) was divided and put first on striking out.

The count of the Chair made the ayes 46, and the noes 45. The Chair voting in the negative, produced a tie, and the motion was pronounced to be lost; but on a second count, the ayes stood 47, and the noes 44—so it was carried.

Mr. Madison now observed, that if any doubt had existed as to the propriety of maintaining an exact and permanent rule for the apportionment of representation in a free Government, he thought the recent course of debate here must have effectually removed it. He had thought that the best mode of arranging the subject would have been to prescribe to the Legislature a fixed basis of apportionment; and he still thought it deserved consideration, whether the Convention ought not to provide some settled plan for future apportionments. Unless some such provision should be made, great inequality would grow up under the operation of the plan agreed to—the people would call for a remedy, and finding none in the Constitution, they would resort to another Convention, against the necessity of which there seemed to be a universal wish to guard, as far as would be consistent with the principles and interests of the Republic.

Within the four great districts, the Legislature was empowered, it was true, to correct any inequalities which might arise, but not to remedy any inequality, as between those districts themselves. And yet the time must come, and perhaps was not far distant, when there would be as great a demand for interference in the latter case as in the former.

He wished, therefore, to submit an amendment in reference to that subject, though it was with great reluctance that he brought it forward at so late a day, and especially at so late an hour. If it did not at once meet the views of the Convention, he had no disposition whatever to press it on them. Mr. Madison then read the following resolution:

"The General Assembly, after the year _____, and at intervals thereafter, of not less than _____ years, shall have authority, two-thirds of each House concurring, to make re-apportionments of Delegates and Senators throughout the Commonwealth, so that the number of Delegates shall not at any time exceed _____, nor of Senators, _____."

The Chair suggested, that the amendment would better cohere to that which had been offered by the gentleman from Frederick, (Mr. Cooke,) and which lay at present on the table.

Mr. Madison consented, that it should not be considered until that was taken up.

Mr. Mathews now moved to strike the counties of Wythe and Chesterfield from the class of counties entitled to one Delegate, and insert them in that of those having two.

Mr. Taylor of Caroline moved to amend the amendment, by adding the word "Caroline."

But this amendment was negatived.

The motion of Mr. Mathews was then discussed by Messrs. Dromgoole, Scott, Mercer and Leigh, and finally negatived—Ayes 34.

Mr. Branch moved a re-consideration of the vote by which Mr. Leigh's plan for increasing the House of Delegates to one hundred and thirty-nine members, had been rejected.

Mr. Marshall of Fauquier advocated the motion. He stated, that if the question were, whether we shall have a large or a small House of Delegates, he should certainly vote in favour of a reduction; but, as the number originally adopted had been increased for the purpose of consulting the convenience of the people, he was willing for the same reason to vote for the increase now proposed.

The motion was negatived by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton,

Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Mathews, Barbour of Culpeper, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Pleasants, Gordon, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—46.

Noes—Messrs. Barbour, (President,) Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Scott, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Thompson, Massie and Bates—48.

Mr. Chapman moved an adjournment, but it was negatived.

The question was then put on *adopting the report* of the Select Committee, arranging the representation in both Houses, as amended, (viz : by adding two to the Lower House, which are to be given to Brunswick and Montgomery,) and carried.

Mr. Campbell of Brooke now moved an adjournment, but it was lost.

Mr. Powell moved, that when the Convention adjourn, it adjourn to meet at 10 o'clock to-morrow, which was agreed to.

The question was then put by the Chair, shall the draught of the Constitution, as amended, be engrossed for a third reading? when

Mr. Leigh moved to amend it, by striking out the counties of Wythe, Caroline and Chesterfield, from the list of counties having one Delegate, and inserting them among those having two, (giving the House of Delegates one hundred and thirty-seven members.)

The Chair pronounced the motion not in order, the House having agreed to the report of the Select Committee.

Mr. Leigh thereupon moved a re-consideration of the vote adopting the report.

But the motion was negatived by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Moore, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Holladay, Henderson, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—46.

Noes—Messrs. Barbour, (President,) Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Beirne, Smith, Miller, Baxter, Stanard, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson, Massie and Bates—48.

So the House refused to re-consider.

Mr. Summers moved to amend the fourteenth section of the Constitution, in that clause of it which requires the Governor to be a *native* citizen of the United States, so as to enable one who had been a citizen for fourteen years, to be eligible, though not a native born.

The motion was lost.

Mr. Summers then moved to amend the section, so as to allow those who had been citizens of the United States at the adoption of the Federal Constitution, to be eligible as Governor.

The motion was carried—Ayes 46, Noes 41.

Mr. Madison now observed, that he was deeply impressed with the importance of the subject involved in the amendment he had offered, and expressed his desire that it might be considered. To illustrate the necessity of having some provision to suit the varying condition of the State, he put the case, that Norfolk should (as he hoped would be the case,) reach a great population: that city could not be duly represented in the Legislature, unless some Delegate were taken from one of the other counties or boroughs. He wished that his opinion on this subject might appear, and he hoped the amendment might be considered.

Mr. Upshur now moved, that Mr. Madison's amendment be laid on the table and printed. The hour was late, (5 o'clock,) and this arrangement would cause no loss of time.

The question was agreed to, and the printing ordered.

Mr. Coalter, wishing to see how the Constitution now stood, since the amendments had been made, moved for its being printed as amended; but, on the suggestion of Mr. Powell, he withdrew his motion.

It was renewed by Mr. Cooke, and carried—Ayes 51.

On motion of Mr. M'Coy, the House then adjourned.

TUESDAY, JANUARY 12, 1830.

The Convention met before 11 o'clock, and was opened with prayer by the Rev. Mr. Lee of the Episcopal Church.

Mr. Madison filled the blanks in his proposition, and otherwise modified it, so as to make it read:

"The General Assembly, after the year 1841, and at intervals thereafter, of not less than ten years, shall have authority, two-thirds of each House concurring, to make re-apportionments of Delegates and Senators throughout the Commonwealth, so that the number of Delegates shall not at any time exceed one hundred and fifty, nor of Senators, thirty-six."

Mr. Chapman moved to amend the resolution of Mr. Madison, by striking out that part which requires the assent of two-thirds of the Legislature, under the persuasion, that if the clause should be suffered to stand, the West would never get a fair ratio of apportionment; and contending, that in a Republican Government a majority ought to govern.

Mr. Madison opposed this motion—its effect would be to give the State a legislative Constitution, instead of a constitutional Legislature. He thought, with this requirement of a majority of two-thirds, the Legislature might be safely entrusted with the task of apportionment.

Mr. Scott said, he had been willing to let the subject rest; but, if it was to be referred to the Legislature to decide at all, it ought to be left to a majority simply. Its introduction into that body would only cause a perpetual struggle, which would be aggravated by requiring two-thirds. He was for the amendment.

Mr. Trezvant asked for the ayes and noes on Mr. Chapman's amendment, and they were so taken as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Fitzhugh, Osborne, Powell, Mason of Frederick, Naylor, Donaldson, Boyd, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Scott, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart and Massie—39.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Baldwin, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Henderson, Cooke, Griggs, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—55.

So the amendment to the amendment was rejected.

Mr. Madison, in consequence of a remark from Mr. Cooke, modified his amendment, by restoring the words "throughout the Commonwealth," which he had stricken out.

Mr. Clopton offered the following, as an amendment to that of Mr. Madison, viz: "And whenever the Legislature shall make a re-apportionment of representation throughout the Commonwealth, they shall cause a re-assessment of the lands to be taken for the purposes of taxation."

Mr. Mercer was apprehensive, that the amendment might be so interpreted, that unless there was a re-apportionment of representation, there would be no re-assessment of lands. From the injustice now experienced on that subject, he was induced to hope that a provision would be introduced, making it imperative upon the Legislature to have a re-assessment at all events.

Mr. Clopton said, he had no objection to the introduction of such a clause, if it was prepared.

Mr. Mercer thought the other clause of the original resolution, requiring two-thirds of the Legislature to consent to a re-apportionment, was still more exceptionable.

Mr. Stanard thought the amendment required to be rendered more definite. There were two species of apportionment which might be referred to—one among the great districts, and the other *within* each of them. He presumed the amendment was intended to refer to the general apportionment.

The Chair read the amendment again, and suggested to add the words "throughout the Commonwealth."

Mr. Clopton accepted this as a modification.

Mr. Stanard objected to the amendment, as unnecessary. It was not to be believed, that when the inequalities in representation should become so great as to require a re-apportionment, the Legislature would refuse a re-assessment as the basis of it.

The question was put, and the amendment of Mr. Clopton to the amendment of Mr. Madison, was rejected.

Mr. Campbell of Brooke, while he cordially assented to the suggestion of the venerable gentleman from Orange, that no Constitution could be agreeable to the people, which did not contain a plan for the future apportionment of representation, was sorry that he could not view the rule he had proposed, as any alleviation of the difficulty. He could not conceive any change in the condition of the Commonwealth, that would bring such a rule into any beneficial effect. There was no hope of getting two-thirds of the Legislature to assent to any equitable principle of apportionment whatever.

Such a proposition would be of no value in any State in the Union. The experiment had been made in Kentucky, as to the removal of the Seat of Government—and the vain efforts to get two-thirds to assent, has cost the State more than a Convention would have done.

He then moved the following amendment:

"The General Assembly shall have power, in the year 1841, and every years thereafter, to apportion the representation in both Houses of that body, so that the number of Delegates in each of the four grand districts, shall bear the same proportion to the whole population of each district, which the present apportionment bears to the whole population of each district, as shall be ascertained by the next census."

Mr. C. said, it must at once strike every gentleman that this amendment embraced a principle which had never yet been submitted as a rule of apportionment. It had all to recommend it which the plan of the gentleman from Albemarle could claim: if there was any principle in that amendment, this went to perpetuate it; and if the principle was just now, it must be so ten, twenty, thirty years hence, and in all futurity. It went to give the same measure of power in proportion to the same population, as was proposed by the plan of the gentleman from Albemarle. It was disadvantageous to the West, as it went to sacrifice all the gain they had obtained in population since the Census of 1820: and whatever disadvantage was experienced by the West, from that gentleman's plan, the same was inflicted by this. But he offered it in a spirit of compromise. The rule was easy of application: it was a question in the Rule of Three: If 180,000, the population of the West at present, gave 31 Delegates to the Western district, what would the population of that district in 1841 give? and so in 1851: and every ten years thereafter.

Mr. Mercer said, the object sought by the amendment, was already provided for by the plan of Mr. Cooke, with this only difference, that the latter plan contained a limitation as to the number of the House of Delegates and of the Senate. The only effect in which this amendment would differ from that gentleman's was, in enlarging the number of both Houses: a consequence to which he was opposed.

One observation as to the amendment of the venerable gentleman from Orange: it provided power in the Legislature to re-apportion representation throughout the State; but it laid down no rule by which they were to be governed in that arrangement. This caused him to vote against the proposal of the gentleman from Giles, (Mr. Chapman:) he could not agree to it, unless he agreed to change the whole foundation of the Government; for, representation constituted that foundation. It was not to be doubted that in 1841, there would be a majority in the Legislature holding the same sentiments as the majority in this body, and which had prevented the adoption of the white basis: and the result would no doubt be the same. It was, in fact, giving power to the Legislature in 1841, to make a new Government for Virginia. Having divided the State into four distinct districts, and thus presented to the people the idea of a diversity of interests, (which he did not believe to exist,) all that remained was to invite three of these divisions to unite in oppressing the fourth, and the Constitution was then in their power.

Mr. Fitzhugh said, his colleague was certainly mistaken in his view of the proposition: it was totally different from that offered by Mr. Cooke. It was the only proposition which had yet been brought forward, which proposed an equal and just rule for future apportionment; and it should receive his decided support. Suppose one of the great districts increased in population greatly, while another should not; this rule went to give to that which increased, an enlarged number of representatives. His objection to the plan of Mr. Cooke was, that it retained the relative proportions now established between the great divisions of the State unchangeably and forever. But this amendment avoided that injustice, and should have his support.

Mr. Mercer said, if he had been mistaken, he had committed a great error: but he was not yet convinced of the fact. Mr. M. here went into an analysis of the amendment, and insisted in his former view.

Mr. Campbell said, that Mr. Fitzhugh had understood his proposition correctly. He here went into an arithmetical illustration of its effect, on the principle of the rule of proportion. The only objection which had any weight was, that it might increase the number of the House of Delegates too much: but then whilst one division gained, another might lose. But he had no objection to have the present number proposed for that House, fixed as a *maximum*.

Mr. Claiborne called for a division of the question, on striking out and inserting the amendment.

Mr. Campbell remonstrated against precipitancy, and asked the House to give its attention to the plan, that its merits, if it had any, might be candidly weighed. All the merits of Mr. Gordon's had consisted mainly in its steering a middle course, and producing a drawn battle between the contending parties: if that were any merit, Mr. C's plan had the same. He insisted on the necessity of some rule for future apportionment, and asked what would have become of the Government of the United States if the Federal Constitution had contained no provision on this subject?

Mr. Joynes said, he had been anxious for some rule on the subject; but that presented by the present amendment was the worst, and the most injurious to the interests of Eastern Virginia, of any that had yet been thought of. The representation now fixed by the plan of Mr. Gordon, gave to the Trans-Alleghany district one representative for about every five thousand of the inhabitants, while in the tide-water district the rule gave them about one for every ten thousand, and this was to be the ratio forever. According to that rule those below the tide-water could never get another representative till their population increased ten thousand above this present number; whereas the West got a new Delegate for every increase of five thousand, while at the same time the one district was nearly stationary, and the other growing with rapidity. He had much rather have the white basis: it would be far less disadvantageous to the East. According to the amendment, the proportion between the great districts would not remain as it was now fixed at all: only the same ratio within each district between the population and representation.

Mr. Marshall of Richmond said, there was a serious objection to the amendment: it went to enlarge indefinitely, both Houses of the Legislature: that must be its necessary effect, unless some restraining clause were added to prevent it. But, such he was well assured was not the sense of the Convention: they wished rather to diminish the Legislature, and their objection to it had been stated by the gentleman from Accomac, (Mr. Joynes.) The apportionment at present agreed on was the white basis as it stood in 1820. They had all agreed that the black population should not be represented in the same manner as the white: and the present scheme pursued that principle. But the amendment said the same proportion should be observed, whether the population were white or black: suppose that the East should get a majority of white population; by this plan they would not get a proportional increase of representation. The amendment would not benefit the Eastern part of the State at all; all its benefits would be confined to the West. It was unjust to adopt a principle which would not apply itself to a change of the population from black to white, when the general basis of the whole plan was in fact white population. In the middle country it was possible, and probable, that the character of the population would be greatly changed: there were none who could consider the condition, especially of the western part of the middle district, and not perceive this to be true; but the ratio of representation would not change with it.

Mr. Mercer proposed to the gentleman from Brooke to modify his resolution, so as to read:

"The General Assembly shall have power, in the year 1841, and every years thereafter, to apportion the representation in both Houses, so that the number of Delegates in each of the four grand districts, shall bear the same proportion to the whole white population of each district respectively, which the present apportionment establishes in such district, the ratio of the present apportionment to be ascertained by the next Census; provided that the House of Delegates shall never exceed in number one hundred and fifty, nor the Senate thirty-six members."

Mr. Campbell accepted the modification.

The question was then put on striking out, in order to insert Mr. Campbell's amendment, and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffinan, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell and Stuart—42.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—53.

So the House refused to strike out, and Mr. Campbell's amendment fell of course.

Mr. Johnson said, he had misunderstood the question, not having attended to the modification as to white population. In its former step he thought the amendment claimed too much for the West; as modified, he thought it was in the other extreme: he, therefore, was willing his vote should remain unchanged.

Mr. Campbell of Washington, now moved to amend Mr. Madison's amendment, by striking out "two-thirds," and substituting "a majority of the Legislature."

The Chair said, that motion had already been made and rejected: and could not, therefore, be put again.

Mr. Campbell said, he had intended to add a proviso, that the new apportionment agreed to by the Legislature should be "adopted by a majority of the whole number of qualified voters."

Mr. Mercer approved the proviso, and moved a re-consideration of the vote on striking out "two-thirds."

Mr. Campbell of Washington supported his amendment by a few remarks. He had always thought that in such a Government as ours, the great point aimed at, was to execute the public will. But some gentlemen seemed to apprehend great danger from bringing the question of apportionment too frequently before the people. For his part, he thought once in ten years was none too often.

Both branches of the Legislature, it would be observed, must concur in any alteration to be proposed; and then, (if his plan should prevail) a majority of all the qualified voters in the State must agree to it before it could go into effect. Not a single question could be settled without this concurrence: and all those who did not vote were to be counted as against the measure. Though his plan might not meet with favour from the House, yet he hoped it would be supported by the gentleman from Albemarle, (Mr. Gordon,) as that gentleman had recently told the House that his opinions as to the white basis had undergone no change.

Mr. Gordon replied with warmth, and complained of being thus singled out, and personally called on for his concurrence in a proposition which the House had decidedly rejected, and to which he was himself opposed.

He did not see why gentlemen from the West should be so much excited in relation to him; his plan gave them more power than they could otherwise have obtained: they might have had the Federal number thrust upon them or the mixed basis, but for his compromise. He would inform gentlemen that he should vote according to the dictates of his own conscience, regardless of their opinions as to his consistency.

He had long ago said, that if a plan could not receive the support of a respectable majority of the House, he should not throw himself into the scale to make it preponderate by his vote. He believed the sovereignty to reside in the people, and not just where this Convention should choose to place it. He went for a Constitution. He wished and hoped to see one adopted by the Convention and by the people of Virginia. To those who claimed to be reformers (and he had himself been one of them) he said, that the exhibitions made on that floor had effectually cured him of all desire to see a Convention again. He came there resolved to advance the cause of popular rights: and what had he found? That all were engaged in a violent struggle to promote the interests of their own section of country, and in no other design. His philanthropic views of men and of theoretical liberty had received a lesson which he should not soon forget. He had seen how easily principles could be forgotten, as soon as they were found to come in conflict with particular interests. He had hoped to see the Convention agree upon something. He had offered his compromise, because he saw the contest was maddening the Convention and maddening the country. There was manifestly a great division of interests and feelings as to a delicate but vital question in the State. If gentlemen were content to make the interests he respected, their sport, by taunting him, let gentlemen beware. He was not to be made their sport. The consistency of his opinions was a matter not to be sported with. He should give such a vote as he thought right, very reckless of the opinions of any.

Mr. Campbell said he had meant to throw out no taunts against the gentleman. He had no unkind feelings toward him; indeed he knew little about him. But he wished to understand what the gentleman meant exactly by telling gentlemen to "beware." If that was intended as a personal threat, he disregarded it. If it was intended to refer to party or political considerations, he equally disregarded it. He too had a choice; and if principles were adopted so entirely contrary to all his notions of right, he preferred remaining as he was: he would go for the old Constitution with the gentleman from Charlotte, [Mr. R. "much obliged to the gentleman!"] unless some change should be made which he approved more than the gentleman's compromise.

Mr. C. said, he believed the plan he proposed had never been before the Convention before. It was, that any plan for future apportionment should be submitted to those who were the real sovereigns of the land, to all who could make their sovereignty felt by *exercising* it. It was true, the sovereignty resided in the people, but how did it operate when it could not be put in exercise? It was by votes that the

people made their sovereignty known and felt. He was for submitting future apportionment to this test. Did the gentleman object to this? Was this the distinction he took? Did he say that it was not his doctrine? that the people should make their will known by their votes? If so, he was welcome to his distinction. He had meant no taunt. But if that gentleman was a disciple of the man who had once given such distinction to his district, (Mr. Jefferson) he should have thought he would have been in favour of such a plan. All he asked for his amendment, was a candid consideration of its merits, and that he knew the House would give.

Mr. Gordon said, he might, perhaps, have received the gentleman's remarks with more warmth than the gentleman had intended. He had not meant to use any personal threat, or any political one. Mr. G. here went into a review of what had taken place in the Convention, and argued to shew, that his amendment had been marked with no inconsistency, and concluded by expressing his hope that he might be let alone, and suffered to vote in obscurity, without being thus compelled to present himself and his course before the Convention.

Mr. Leigh wished to know, if the question on re-consideration was to be made a test question as to the amendment itself?

Mr. Campbell expressed his willingness that it should be so considered.

Mr. Mercer made some remarks which were inaudible from the confusion in the House. When he began to be heard, he was saying that the end of the present motion was the accomplishment of what the venerable gentleman from Orange had so much at heart, the securing of a majority in favour of the Constitution. The Convention having organized four distinct parties in the State with notions of separate and conflicting interests, if provision was made for re-apportionment in future without any controul over the action of the Legislature, they would expose the basis itself of the Government to be changed.

He differed from the gentleman from Albemarle as to its producing discontent. The discontent was likely to grow from applying a fixed rule to a changing state of affairs. This amendment went to check the operations of a majority of the Legislature by the will of a majority of the voters of the Commonwealth: and in that he went on a principle already sanctioned; for the very Constitution they were making was by law to be submitted to that very ordeal. It was to be judged of by the votes of the qualified voters for the most numerous branch of the Assembly. Without such a check he could not vote to leave the subject of apportionment to a majority merely of the Legislature. A bare majority might be in favour of adopting Federal numbers as a basis in future.

At the suggestion of Mr. Stanard, Mr. Campbell changed the form of his amendment, so as to avoid the necessity of any re-consideration, by adding merely a proviso at the end of Mr. Madison's amendment.

The question now being directly on the adoption of this amendment,

Mr. Naylor made a very animated address to the Convention, deprecating the idea that the people must be thrown into a state of agitation, by having the question of representation from time to time submitted to them. He scouted the idea that the utmost injustice must be submitted to, and things left to take their downward course, as they might, rather than disturb the people and run the risk of an excitement. Were the people not to be trusted? Must they be "saved from themselves?" Were they "their own worst enemies?" This was the doctrine of the Holy Alliance, not of a Republican Assembly. Was this famous compromise to be such an anodyne that the people were to sleep under it to all time? Must they never be awakened to adopt any other apportionment than that now fixed upon? For his part, he had rather see symptoms of life than of death among the people. He had no faith in this medicine. He did not believe it was such a catholicon, as would cure all maladies now, and prevent them forever hereafter. He contended that a rule of re-apportionment would prevent the real agitations that must ensue, if another Convention had to be resorted to. He concluded by expressing his opposition to all those horrors about trusting the people with their own affairs: he believed in none of those dangers at all.

Mr. Smith asked for the ayes and noes.

Mr. Leigh asked that the question should be divided.

It was, accordingly, first put on *striking out*; and decided by ayes and noes as follows:

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart and Thompson—45.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart,

Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—50.

So the Convention refused to strike out, and Mr. Campbell's, of Washington, amendment fell of course.

The question then recurred on the amendment of Mr. Madison, and was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Powell, Campbell of Washington, Roane, Taylor of Caroline, Garnett, Barbour of Culpeper, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Townes, Martin, Pleasants, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly and Perrin—50.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Byars, Morris, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Scott, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Gordon, Thompson and Upshur—45.

So Mr. Madison's amendment, leaving future apportionment to two-thirds of the Legislature, was adopted.

Mr. Cooke now moved to amend the fourth article of the draughted Constitution, by striking out "1841," and inserting "1833," so as to reconcile the people to the adoption of the Constitution, by holding out to them the prospect of a speedy redress of grievances. He was aware that some gentlemen thought their constituents had been hardly dealt by, nor could any thing else be looked for from the imperfect lights under which the Convention had acted, in making the present apportionment. In 1833 the Legislature would have all the benefit of the Census of 1830, to guide them.

The Chair said it was not strictly in order to consider this amendment, as the fifth article had been adopted.

Mr. Cooke then moved to re-consider the vote on reference to this particular section of the Constitution.

Mr. Henderson said, he hoped the vote on re-consideration would be taken as a test vote on the amendment.

Mr. Powell concurred in this desire, and expressed his purpose of voting against the amendment.

Mr. Claytor understanding the remark of Mr. Cooke as in part applying to him, enquired if he could suppose that this amendment would remove the objections of those who had considered their constituents as injured by the present arrangement? The appeal was to be to a Legislature constituted on such principles as must throw them into a minority, and they were to appeal to a majority for redress. His vote would not be changed by this additional tub to the whale, after the other tub of the two-thirds majority. He went for substantial. He was not to be tantalized by being told—yes—your grievances shall be heard—and very soon: but before a packed jury, prepared already with a verdict. [Here Mr. Claytor was called to order by the Chair—and apologized.]

Mr. Cooke denied that the amendment was any tub to the whale. He should be pleased to get the gentleman's vote for the Constitution; but whether such might be the effect of the amendment or not, he thought it valuable in itself, and that it ought to be adopted.

The question was then put on re-considering, and the Chair made the votes to be Ayes 46, Noes 46, and gave the casting vote in the negative: but suggested that possibly there might be some error in the count; whereupon,

Mr. Cooke called for the ayes and noes, and they were taken as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Marshall of Richmond, Williamson, Smith, Miller, Randolph, Leigh of Halifax, Logan, Madison, Stanard, Holladay, Cooke, Naylor, Donaldson, Campbell of Washington, Taylor of Caroline, Morris, Garnett, Mathews, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Campbell of Bedford, Saunders, Townes, Pleasants, Gordon, Massie, Bates, Rose and Coalter—43.

Noes—Messrs. Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Baldwin, Johnson, M'Coy, Moore, Beirne, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Venable, Mercer, Fitzhugh, Henderson, Osborne, Powell, Griggs, Mason of Frederick, Boyd, Pendleton, George, M'Millan, Byars, Roane, Cloyd, Chapman, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson,

Claytor, Branch, Cabell, Martin, Stuart, Thompson, Neale, Joynes, Bayly, Upshur and Perrin—51.

So the Convention refused to re-consider the vote by which the fifth article of the Constitution had been adopted.

Mr. Clopton moved the following amendment to the fifteenth article :

"And a Privy Council, or Council of State. The Governor shall be elected by joint vote of the two Houses of the General Assembly, and shall hold his office during the term of three years, to commence on the first day of January next succeeding his election, or on such other day as may from time to time be prescribed by law; and he shall be ineligible to that office for three years next after his term of service shall have expired. The Privy Council, or Council of State, shall consist of four members, and shall be elected by joint vote of the two Houses of the General Assembly, for the term of four years. They shall annually choose out of their own members, a Lieutenant-Governor, who, in case of the death, inability, or necessary absence of the Governor from the Government, shall discharge the duties of Governor. The Governor shall be President of the Council, and shall, in all cases of division, have the casting vote. At the first election, the two Houses of the General Assembly shall, by joint resolution, divide the persons elected into two classes. The seats of the members of the first class shall be vacated at the end of the second year; and of those of the second class, at the expiration of the fourth year; so that one-half may be elected every second year. And if vacancies happen by resignation or otherwise, they shall be filled by joint vote of the two Houses of the General Assembly. Two members, with the Governor or Lieutenant-Governor, as the case may be, shall be sufficient to act; and their advice and proceedings shall be entered of record, and signed by the members present. (to any part whereof any member may enter his dissent,) to be laid before the General Assembly when called for by them."

He accompanied his amendment with a brief explanation to shew the reason why he had changed his views in regard to a Council; being in substance this, that the election of Governor was now transferred from the people to the Legislature. After this change a controlling council was in his view highly expedient. The article was in so imperfect a state that some amendment must be made to it.

The question being put on Mr. Clopton's amendment, it was negatived by the following vote :

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield. Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Branch, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Upshur and Perrin—45.

Noes—Messrs. Tyler, Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Scott, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Thompson, Joynes and Bayly—49.

Mr. Summers expressed his desire that the proposition he had some days since offered in relation to the incorporation of Banks be taken up.

But the motion for consideration was opposed by Mr. Powell, and negatived by ayes and noes as follows :

Ayes—Messrs. Barbour, (President,) Giles, Brodnax, Dromgoole, Alexander, Goode, Anderson, M'Coy, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Randolph, Venable, Madison, George, M'Millan, Campbell of Washington, Byars, Roane, Taylor of Caroline, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Cabell, Martin, Bayly and Upshur—38.

Noes—Messrs. Jones, Leigh of Chesterfield. Taylor of Chesterfield, Marshall of Richmond, Tyler, Nicholas, Clopton, Coffman, Harrison, Williamson, Baldwin, Johnson, Moore, Beirne, Urquhart, Leigh of Halifax, Logan, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Morris, Garnett, Cloyd, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Claytor, Saunders, Branch, Townes, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes and Perrin—57.

Mr. Clopton now offered the following amendment, which he accompanied by a few explanatory remarks :

"There shall be a Council of State, to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both Houses of the General Assembly, and remain in office three years. But of those first elected, one, to be

designated by lot, shall remain in office for one year only, and one other, to be designated in like manner, shall remain in office for two years only. Vacancies occurring by expiration of the term of service, or otherwise, shall be supplied by elections made in like manner. The Governor shall, before he exercises any discretionary power conferred on him by the Constitution and laws, require the advice of the Council of State, which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the General Assembly when called for by them. The Council shall appoint their own clerk, who shall take an oath to keep secret such matters as he shall be ordered by the Board to conceal. The Senior Councillor shall be Lieutenant-Governor, and in case of the death, resignation, inability or absence of the Governor from the seat of Government, shall act as Governor."

Mr. Stanard thought it better to put the question in a naked form as to whether there should be any Council at all, and he proposed an amendment to try that question, if Mr. Clopton would withdraw his.

Mr. Powell opposed it as tending to a waste of time.

Mr. Leigh advocated the amendment of Mr. Clopton with much earnestness and at considerable length, urging a summary of arguments he had formerly so repeatedly and in so expanded a form presented to the Committee of the Whole and to the Convention on this subject.

Mr. Clopton objected to withdrawing his amendment, not believing any advantage would be gained by taking the naked question. The House had rejected a controlling Council; there remained only an advisory one to be proposed: if that were rejected, the question would be settled.

Mr. Coalter urged the value and necessity of a Council in time of war, and referred to the history of the last war in confirmation of his position.

The question on Mr. Clopton's amendment was then decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Johnson, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Branch, Townes, Martin, Pleasants, Gordon, Massie, Bates, Neale, Rose, Coalter, Joyner, Upshur and Perrin—51.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Claytor, Saunders, Cabell, Stuart, Thompson and Bayly—44.

So the amendment for an advisory Council to the Governor was adopted.

Mr. Marshall moved to amend the eighth article by striking out the words "except money bills, which in no instance shall be altered by the Senate, but wholly approved or rejected."

Mr. Marshall said, he should not have renewed a motion which had been rejected in Committee of the Whole, if any reasons had then been assigned for the rejection of it; nor should he have meddled with the subject, if the Committee, appointed to draught the Constitution, had had this subject under their consideration; but it was not among the amendments agreed to in the House, and so not referred to that Committee. Under these circumstances, he felt it his duty to bring the subject before the Convention. He never could conceive the reason in favour of this part of the old Constitution. It had always appeared to him to have been introduced into it, from an assimilation of the Senate to the British House of Lords. Nothing was more natural when we were just leaving a Government under which we had been born, and had grown up in high respect for all its principles, that such an assimilation should have taken place. But nothing could be more dissimilar than our Senate, and the House of Lords; which was a paramount body, hereditary in its structure, sitting in its own right, and naturally apt to be much under the influence of the Crown. The rule was adopted there, because it might otherwise have been considered as a difficult and unpleasant task to resist in the lower House, an amendment proposed by the upper, and supposed to be in conformity with the will and wishes of the Crown. But there was nothing of this sort in Virginia. The members of the Senate were as much the representatives of the people as those of the House of Delegates. They were elected in the same manner, by the same persons, and they receive the same pay as members of the other House.

[Here Mr. Coalter interposed, and said that wisdom lifted up her voice in the streets, but was not heard. The Chair called the House to order, and the confusion in some degree subsided.]

Mr. Marshall resumed: He could see no essential difference between them. In all respects they resembled each other. The reason why the Legislature was divided into two branches was, that one might exercise a supervision over the acts of the other, and amend its acts when necessary. And to this end a mode of communication was established by the Constitution, by which one of those bodies communicated to the other its sentiments respecting the acts of that other body. This was intended to be the result of having two Houses of Legislature. But this cardinal principle was violated by this clause, which refused to the Senate the right of amending money bills sent up from the other House. It was an abridgement of the rights of the Senate. No reason could be given for it. The regulation was perfectly useless: and more; it was productive of a positive injury. It did not prevent the amendment of money bills by the Senate, but forced that body on a more circuitous and time-consuming mode of effecting the object.

The Senate rejected a bill, which they wished to amend. The other House had no official communication from them, of such a wish; but on such private intelligence as they might obtain, they draughted a new bill. This bill might not embody all the amendments the Senate wished to introduce: then this too was rejected, and more bills were draughted; and thus, much of the public time was wasted—and to what purpose? But this was not all. The Senate and the House might disagree as to what was meant by a money bill. He had known three or four days to be consumed in a dispute between the Houses on that subject. The House of Delegates contended, that all bills, containing appropriations of money, were money bills; the Senate denied this, and considered it as an attempt at usurpation by the other House, to bring within that term, any but bills simply for revenue. He had known three or four bills amended, and consequently rejected, on this ground, until at length the House of Delegates had conformed the bill to the form the Senate had at first desired. The rule, therefore, was found inconvenient in practice, besides being wrong in principle. It forced the Senate on a clumsy, bungling, time-wasting method of getting at the object; but did not operate to prevent the amendment, which it forbade.

The question was taken on the amendment of Mr. Marshall, and decided in the affirmative: Ayes 49.

So the amendment was adopted.

Mr. Campbell of Brooke, now suggested various grammatical amendments in the draught of the Constitution—all which were successively rejected.

Mr. Thompson moved the following amendment: "The privilege of the writ of Habeas Corpus, shall not be suspended *unless when, in cases of rebellion or invasion, the public safety may require its suspension.*"

At the suggestion of Mr. Randolph, he struck out the qualification for cases of extreme necessity: and thus modified, the amendment was agreed to: Ayes 61.

Mr. Green moved the following, to be inserted after the ninth article: "The whole number of members, to which the State may at any time be entitled, in the House of Representatives of the United States, shall be apportioned as nearly as may be amongst the several counties, cities, boroughs and towns of the State, according to their respective numbers, which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding indians not taxed, three-fifths of all other persons."

Mr. Summers explained the reasons why he should vote against the amendment: not that he was opposed to its principle, but because it was unnecessary and improper, to regulate by the State Constitution, any of the powers or duties devolved on the Legislature by the Constitution of the United States. Under that authority, the General Assembly had for forty years wisely and satisfactorily exercised the discretion confided to them, and he thought it could not be abridged or restrained by any act of the Convention. If, however, this obligation did not exist, he would not consent to consecrate a rule (by its insertion in the Constitution) providing for the apportionment of representation for the benefit of the slave-holders, while every effort to secure the rights of the free white population in the State Legislature, was so obstinately and successfully resisted.

Mr. Wilson said, the resolution went on the assumption that the Constitution of the United States would always remain as it was now. But suppose that a Constitutional majority of the States of the Union should unite to change that feature of the Constitution, ought not the State Constitution to conform itself to such a possibility? Gentlemen were not satisfied with having gotten the Legislature of Virginia on their side: but would secure that rule so long as the Constitution of the United States was to last. They seemed much more anxious about the representation of slaves than of the free white citizens of the Commonwealth. Where was now their dread of excitement? When the question related to the representation of white men, spectres were instantly raised, but they had now all suddenly disappeared.

Mr. Randolph now rose :

Mr. President,—Is it possible that any gentleman can believe that the great southern and western slave-holding interests of the United States will ever *abandon* this provision for the representation of three-fifths of their slave population? Sir, I cannot conceive of a greater moral impossibility. And if we—the people of Southern Virginia—torn and divided as she is by factions—marked as she is by lines which divide her into two distinct people—distinct in their feelings—distinct in possessing different and antagonizing interests—if we, the people of Virginia—shall ever surrender this question to the other States of this Union—that is, to Northern and Eastern States—if it is possible that we—who constitute the barrier of the Southern interest—the outwork and the bulwark of the great Southern interest—shall—basely I was going to say, for base it will be—shall basely abandon that provision—can any man believe that all the Southern States—that the Carolinas, that Georgia, that Alabama, that Louisiana, that Missouri and Tennessee, and all the others which I need not name, will ever abandon it? No; they never will. And the attempt—whenever it shall be made—to touch this bulwark, will be but sounding the tocsin of disunion. The Government of the United States could not last a day after such an attempt.

Sir, the question is—shall the apportionment of representation which the Federal Constitution secures to the slave-holding States, be the apportionment on which members of Congress shall be elected, or shall it not? Whatever may be the opinion entertained in parts of the State, which I must call alien to us, and forever separated from our interests and feelings—there is but one opinion on this side the North Mountain, I should hope—certainly on this side the Blue Ridge. Who will be the first to touch this principle? Who will dare to attack it? Who will venture on it? I should like to see that man—No—I do not wish to see him.

Mr. President: There is nothing which so alarms me, as to see the existence of the fanatical spirit on this subject of negro slavery, as it is called, growing up in the land. Sir, we have preachers on that subject both lay and clerical. We have Apostles of that faith among the laity as well as the clergy. And if it had so happened—but God in his mercy averted from our country so great a calamity—that representation had been established upon the basis of white population—my life for it—yes, all I am worth—in less than twenty years, you would have seen a Bill brought into the House of Burgesses for the emancipation of every slave in Virginia. Sir, I would as soon trust the Quakers of Pennsylvania as the Quakers of any county in Virginia. I would as lief trust the Fanatics of Free-masons Hall, London, as any other Fanatics—for Fanatics—like madmen—are on a par. Yes, Sir, I would as lief trust the Fanatics of Free-masons Hall as the Fanatics in Virginia. Sir, have you not good reason to believe—nay, do you not know—that petitions were preparing for the purpose of being presented to this body on that subject? I have nothing to do with the consciences of men. The abolitionist is as free to hold his opinions as I am to hold mine—I do not find fault with him. I impute no demerit to him for them. But I never will suffer him to put a torch to my property, that he may slake it in the blood of all that are dear to me. I will arrest his hand if I can—by reason if I can—but if not, by force. This is the whole question—Shall representation be on the terms and principles which the Constitution of the United States requires? If we say no—to what does the rejection amount? To a most violent presumption—almost to the direct affirmation—that this part of the Constitution of the United States, Virginia stands ready to give up. That will be the amount of it. Sir, if the motion had not been made, the case would be very different. But the motion having been made, the abandonment of it by that part of Virginia directly interested in it, and in the preservation of that property for themselves, their wives and their children, will be a very different affair. If we say no, it will be an abandonment of the principle—it will be a declaration to all the world, that we are ready to surrender the question to the first Peter the Hermit, who shall cross the mountains with “Universal Emancipation” on his flag.

I hope the question will prevail, not only—but that it will prevail by an overwhelming majority. I declare to God that it is in no reference to the question of representation—a question which, because it could not be well settled, has been very wisely sunk—that I speak with ardour on this subject. I will be the last to give up the question: and Sir, if Virginia could be base and recreant enough to give it up, she would be forced on by the bayonets of her Southern neighbours:—Yes, Sir, she would be forced to fight—from cowardice, if not from gallantry. Sir, she can't give it up. If she does, she lays the axe at once to the root of all the slave property in the Commonwealth.

Mr. Summers said, he rose to disclaim the imputation of being an abolitionist. He was none.

[Mr. Randolph interposed. Sir, I have not imputed it to the gentleman—I had no reference to him—I do not charge him with any such thing.]

Mr. Summers said, he had risen, not only to make the disclaimer to which he had adverted, (as no one more earnestly deprecated the evils which might arise from mis

guided zeal on this subject than he did,) but for the purpose of deprecating the present movement. The vote on this question, he said, might give rise to an opinion that a part of the State was willing to give up this principle of representation in the General Government; and he wished to avoid such deductions, so far as he was concerned. Highly as he prized the Union, he would give it up rather than surrender this indemnity for the concession made by Virginia: he opposed the amendment on the ground that we could not superadd provisions to those contained in the Constitution of the United States in relation to this subject, and that for the reasons which he had given, he would not if this objection was removed.

Mr. Coalter said, they were not there to alter the Constitution of the United States. He was sworn to support it, and until it was altered he should support it as it stood. He must vote for the amendment.

Mr. Johnson rose to suggest to the mover so to modify the amendment as to make it refer to the Constitution of the United States as it now existed. There was a power by which it might be changed, however little probability there might be of such an event. He considered the question as one of little consequence, but it would be as well to remove objections. Would it not be better to add a proviso to cover any change in the Federal Constitution?

Mr. Cabell said, in supporting the proposition of the gentleman from Culpeper, (Mr. Green,) I am not governed by any threat, or the fear of the *rod* held in terrorem over my head, by any gentleman, however eminently distinguished. I am actuated by a regard to the principles which have hitherto, and will hereafter continue to guide my public conduct. I have the pleasure to see on this floor, several gentlemen, with whom I formerly served in the State Legislature, who can attest, I believe I may safely say, the firmness and decision at least, with which I recorded my vote by the side of their's in maintenance, as we thought, of the violated "rights" of the "States." And Sir, be assured, that in any question, as between the United States, and the land of my nativity, "if I do not put my foot as far as who goes farthest," I am most egregiously mistaken. I have seen with regret, in the progress of our session, various propositions made with a design to introduce into our organic law, several of the features of the Constitution of the United States; one of the very last Constitutions which I would select, as a *model* fit for our imitation. The support, therefore, which I owe to this proposition, is the result of the conscientious convictions of my own judgment. I am gratified by the opportunity now afforded, to place the question involved in this proposition, beyond the reach of controversy, a result which I anticipate from engrafting it into the Constitution. It has been said "that a gentle hand leads an elephant by a hair;" I too, may be led, Sir, but I must be pardoned for disclaiming the idea of being dragged into measures. The position I occupy in relation to the parties by which this House has been divided—the support I have conscientiously given to the "White Basis"—one which had, in my opinion, no connection with the matter in hand—a question, which has not been, nor never will be "sunk," till the heart of man becomes obdurate from corruption, and until the spirit of liberty is *extinguished* in this land—all these considerations unite to render it a duty to myself, without the slightest intention to use language offensive to any other gentleman, to make this explanation of my motives.

The question was now taken, and decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Johnson, M'Coy, Moore, Beirne, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyal, Prentiss, Grigsby, Campbell of Bedford, Clayton, Saunders, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—60.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Smith, Miller, Baxter, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke and Wilson—35.

So the amendment of Mr. Green was adopted.

Mr. Chapman moved to amend the twenty-sixth section by adding as follows:

"Provided the said Judges continue to hold such Courts, and perform such duties as shall be assigned them by law; but if any Judge shall fail to hold any such Court, or perform such duties, except from sickness or other cause beyond his controul, a deduction may be made from his salary. And such deduction shall bear the same proportion to his whole salary, that the services unperformed would bear to the whole services required to be performed, and the Legislature shall make provision by law to ascertain the amount of the deduction proper to be made in any such case."

MR. CHAPMAN addressed the Convention as follows :

MR. President,—This proposition is not offered through any prejudice or excited feelings which I have towards the Judges. So far from it, that I consider it the most important department of our government. It is this department which protects the weak from the violence of the strong, the simple from the snares of the crafty. It is this department which protects our lives, our liberties, our properties, and our reputations. Against such a department of the government, I could not, therefore, entertain unjust prejudices. I believe there is no member of the Convention who would more willingly see the Judges made so independent, that they could not by public clamor, or political excitement, be induced to swerve from the path of rectitude. Yet I am one of those who think the Judges ought to be made much more responsible to the people than they are under the existing Constitution. I should be willing to provide them ample salaries, which should not be diminished during their continuance in office, provided they performed the duties assigned to them. I admit the labourer is worthy of his hire, but I should expect a *quid pro quo*. In many cases where a Judge should neglect to perform the duties for which his salary was intended to pay him, I think it would be unjust for him to take the salary, and leave the business of the people undone. I have at this place, and elsewhere, heard much complaint against the Judges on the principle that they would receive the people's money and neglect to perform the people's business; that they would receive their salaries whether they perform their duties or not. The amendment I have offered will go to prevent this state of things. Whenever a Judge is diligent and will perform his duties as far as he is able, this clause of the Constitution would have no operation on him. All that I would ask is, that he should perform the services expected from him, and then receive his money, but not to receive his money and not perform services therefor, which would be in his power to perform. If a Judge should be sick and unable from any cause beyond his control to perform the duties required of him, the proposed amendment still allows him to draw his full salary; but if a Judge should rise in the morning and the weather being disagreeable or wet, and he should determine that the weather is rather too bad to turn out, and if on the same day hundreds should be attending at the court-house waiting for the Judge to hold his court—I should say under these circumstances, there ought to be a deduction from his salary. Or if a Judge was to start to court, and come to a water-course a little up, which by travelling twenty miles he could go round the head of, or by travelling eight or ten miles out of his way, he could get to a place where he might cross with safety, and when many others had crossed in order to get to court, if the Judge was to turn back and fail to hold a court, I would say that a deduction from his salary ought to be made in such a case. I would state another case: Suppose a court should be established to consist of five Judges, any three of whom should form a court to proceed to business, and one or two of them were to remain at home attending to their domestic concerns, expecting the other three to go on and do the business. I should think in such a case, there ought to be a deduction made from the salary of those Judges who remained at home. Or, Sir, take our Court of Appeals as an example. This Court is formed of five Judges, three of whom may form a court to do business. Suppose one of these Judges was to remain at home, when it was in his power to attend, and let the other four go on in deciding the causes; the court take up two causes, depending on the same principle, but decided in the Inferior Courts directly in opposition and contradiction of each other. The four Judges differ in opinion, and are equally divided. What is the consequence? That both judgments of the Inferior Court stand affirmed, although the decisions of the Inferior Courts were directly in opposition to each other. In examining the reports of the decisions of the Court of Appeals, I have frequently observed, that where causes of much importance had been decided, there would be a note by the Reporter that such a Judge was absent, and such another Judge was absent, and sometimes it is stated that the Judge is absent from indisposition, distinguishing it from the other case where it would seem he was not absent from indisposition. There is something wrong in this; the fault is either in the law or the administration of the law, and let it proceed from what cause it may, the people feel the evil of the great delay in deciding causes in the Court of Appeals, and if possible, the corrective ought to be applied. I think if we advert to what has taken place in our General Court, the propriety of the provisions I have proposed will still be more manifest. The General Court is required to meet twice a year in Richmond to hold a court for the trial of Commonwealth's business, and to determine on points of law adjourned from the Superior Courts for novelty and difficulty, and certify their opinion to the Superior Courts of Law. Where a point is adjourned in a criminal case, the prisoner remains in jail until the decision of the General Court is certified to the Superior Court of Law: the law requires that a majority of all the Judges shall be present to decide a law point in a criminal case, where the life of a human being may depend on the decision. We know, that in the General Court it has frequently occurred that a majority of the Judges have failed to attend the court as re-

quired by law; in such a case, the prisoner whose case is adjourned to the General Court, must lie in jail until it may be convenient for a majority of the Judges of the General Court to attend and decide the case adjourned for their decision. I think it has seldom, perhaps it never has happened, that a majority of the Judges have been sick at the same time, and unable to attend the General Court from that cause. Yet, Mr. President, you know cases have happened, that in consequence of a majority of the Judges of the General Court having failed to attend, prisoners have been confined in jail from term to term without a trial: you know in the case of Benjamin Kee-wood, who was indicted for the murder of his wife. The case was adjourned to the General Court, as the clerk of the Superior Court of Law, where the indictment was found against him, had omitted to make any entry on the record of the finding such indictment, which omission had escaped the notice of the Judge until after the adjournment of the court. The case was afterwards adjourned to the General Court, to decide whether an indictment had been found against him for murder, as no entry appeared on the record. A majority of the Judges of the General Court failed to attend at the first term—at the next term the case was continued, and ultimately the General Court decided that no indictment had been found against him; and at about the expiration of three years confinement in jail, he was discharged, it being decided that as he had been confined until the third term of the court had passed, that he could not be indicted afterwards, and the murderer of his wife escaped the punishment due to his crime. I think the amendment proposed would be well adapted to such cases as I have mentioned. If the law makes it the duty of the Judges of the General Court to attend and hold the court, I ask if it would be right for them to draw their whole salary, in the same way as if they had performed all the duties assigned them by law?

Again; I am strongly inclined to think whenever this Constitution shall go into operation, that there will be some change in the Circuit Courts. They will probably be given chancery as well as common law jurisdiction, and, perhaps, two assigned to a circuit. I would wish to see such a provision in the Constitution, as would have the effect of preventing the Judges from making arrangements between themselves that you shall attend that court, and I will attend this. I have seen something of this, when the old District Courts were in operation. Two Judges would be directed to attend several District Courts—for instance, at Washington, the Sweet Springs, and perhaps some other places. It frequently happened that both the Judges would attend at the Washington District Court, from thence they were to come to the Sweet Springs; but unless a prisoner should be there, which required the presence of the two Judges to try him, it frequently occurred that the court at the Sweet Springs would be holden by one Judge only, the other Judge at that time, being on his way home, or, perhaps, by agreement to attend at some other court, which ought to have been holden by two Judges. I well recollect that when I applied for license to practice law, I attended at the Sweet Springs District Court: I found only one Judge there, and was informed that the other was on his way home. After being examined by the Judge at the Sweet Springs, I then pursued after the other Judge, and overtook him before he got home, and was examined by him. Cases of this kind have induced me to think, that such a provision as I have proposed, ought to be engrafted in the Constitution; and then the Judges themselves would feel it their interest to attend diligently to all their courts, to prevent a reduction from their salaries. How, Sir, is this provision to operate? Not to the injury of a diligent and faithful Judge, for he would always draw his full salary. Such a provision as I now propose, if it had been in the old Constitution, I know, would have had no effect on the very diligent Judge, who presides over the circuit in which I live. That Judge (I mean Judge Allen,) has presided in that circuit for eighteen years. Three of the courts in his circuit I have regularly attended—and, Sir, in the course of the eighteen years he has never missed a single court. Yes, Sir, he has not only attended court, but at 9 o'clock in the morning he would go on the bench, and never leave it until 4 in the evening, unless the business set for the day was got through before that hour. Indeed, Sir, I have frequently known that Judge to take his seat at 9 o'clock in the morning, and remain on the bench until 9 o'clock at night, without any intermission or recess of the court. For such a Judge as this, the amendment proposed holds out no terrors.

I have also attended two of the courts of an adjoining circuit, where Judge Johnston presides. Wythe, one of the counties, I have attended for eighteen years—Grayson, not so long. But, during the time I have attended those courts, that Judge has never failed to hold his courts, except last spring, in the county of Grayson. The Judge had come on to Wythe court, where he had a violent attack of disease, and was unable to get to Grayson court. Consequently, on him, the amendment proposed would have no effect.

But, it may be asked, how is it to be ascertained, whether a Judge has failed improperly to attend his courts? I reply, that I have no doubt but the wisdom of the

Legislature can prescribe the mode in which that fact can be correctly ascertained. But, I do not think the task would be a difficult one. I would make it the duty of the Clerk of the Superior Court of Law to certify to the Auditor of Public Accounts, that the Judge had failed to attend his court. The Clerk should certify the same fact to his County Court. And if the Judge, by his own affidavit, or the affidavits of others, could shew to the County Court, that he was prevented by sickness, or other cause beyond his controul, from attending his court, the County Court should certify that fact to the Auditor; in which case, no deduction should be made from his salary. But, if the County Court should be of opinion, that the Judge had failed to shew good cause for failing to attend his court, they should certify that fact to the Auditor, and a deduction should be made in such case. A similar mode might be adopted, as it respects the Judges of the Court of Appeals. The Legislature, directing that tribunal, should make the necessary enquiry into the failure of the Judge to attend his court.

The plan I have proposed, that the Judges should be paid according to the services they perform, is not without an example. Some of our sister States have adopted a similar principle. For instance, in the State of North Carolina, the Judges receive a certain sum for each court they may hold; but, if they fail to hold a court, a deduction is made from their pay for such failure. It may be said, there is a provision now in the Constitution, authorising the Legislature, two-thirds of both Houses present concurring therein, to remove a Judge for a failure to do his duty, or for neglecting to do the business assigned to him, or for any other cause. I think it seldom or ever would happen, that a Judge would be removed for these omissions to perform his duty that I have mentioned. It must be a very glaring act of impropriety in a Judge that would induce two-thirds of the Legislature to turn him out of office. It would be a very painful duty for any Legislature to perform. We know what sympathy and commiseration would be excited in favour of a Judge who had spent a large portion of his life-time in the public service. Such would be the sympathy and commiseration, that the Legislature would always be inclined to overlook small failures, rather than disgrace a Judge by removing him from office. I therefore think, that the clause incorporated into the Constitution, authorising two-thirds of the Legislature to remove a Judge, would not have the desired effect, and accomplish the end I have in view. The principle I contend for, is a principle of immutable justice, that no man shall receive something for nothing; that no man shall receive his pay without performing the services for which the pay was to be given, if in his power to perform them. This would be doing justice to the people and justice to the Judge.

Mr. President, I have delayed offering this amendment, with a hope, that some other gentleman of this Convention, much abler than myself, and who would be much better calculated to do justice to this important subject than I am, would have offered a similar proposition; but no gentleman having done so, I felt myself constrained, from a sense of duty, to submit this proposition of amendment. I am aware, that many gentlemen differ from me in opinion on this subject; but believing the principle correct, I am willing that the world shall know my vote on this subject. I shall, therefore, ask for the ayes and noes on this question.

Mr. Coalter said, gentlemen need not be alarmed: they would have no Judges to remove after this day: he meant *Judges*, not men filling Judicial stations.

The question was now taken by ayes and noes and decided as follows:—

Ayes—Messrs. George, M'Millan, Campbell of Washington, Byars, Chapman, Oglesby, Campbell of Bedford and Cabell—8.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Roane, Taylor of Caroline, Morris, Garnett, Cloyd, Mathews, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Claytor, Saunders, Branch, Townes, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—87.

So Mr. Chapman's amendment was rejected.

Mr. Cooke now moved to add the following as a separate article:

"I. It shall be the duty of the Executive Department of the existing Government, so soon as all the returns required by the twentieth section of the act of the General Assembly, entitled, "an act to organize a Convention," shall have been made, if it shall appear that a majority of all the votes given is for ratifying this amended Constitution, forthwith to make proclamation of the fact.

"II. And it shall moreover be the duty of the Executive Department, in and by such proclamation, to command the sheriffs and other officers, directed by law to hold and superintend elections, under the penalty of dollars for failing to obey such command, to open polls in their respective counties, cities, towns and boroughs, and in the election districts established by law in their respective counties, on the , for the election of a Delegate or Delegates, as the case may be, to represent the counties, towns, boroughs and districts, respectively mentioned and described in the third article of this Constitution, and of a Senator to represent each of the Senatorial districts described in the fourth article.

"III. So soon as the said election of Delegates and Senators shall have been made, the previously existing Senate and House of Delegates, elected under the old Constitution, shall cease to have legal and constitutional existence.

"IV. Should any of the contingencies herein before mentioned, render it necessary or proper to convene a General Assembly, after such election shall have been made, and before the time herein after appointed for the first regular annual meeting of the General Assembly under this amended Constitution, the new General Assembly shall be convened by the Executive Department holding its power and authority under the old Constitution.

"V. The first regular General Assembly under this amended Constitution, shall convene and assemble at the Capitol, in the City of Richmond, on the .

"VI. The powers and duties of the Executive Department under the old Constitution, shall cease and determine, and those of the Executive Department under the new Constitution, shall commence as soon as may be after the commencement of the first regular session of the General Assembly elected under the new Constitution.

"VII. All officers, whether civil or military, holding their offices under the old Constitution, whose cases are not herein provided for, shall continue to hold their offices under the new Constitution, by the same tenure, and for the same time, as under the old Constitution.

"VIII. All the Courts of Justice now existing in this Commonwealth, shall continue with the same jurisdiction as heretofore, until the said courts shall have been modified or abolished, or the jurisdiction thereof modified or taken away, by an act or acts of the General Assembly, made under the restrictions and limitations herein before provided."

He added a few words in explanation.

Mr. Johnson expressed a doubt, whether the Convention had a right to provide a different mode for carrying the Constitution into effect, than that appointed by law; and also, if they had, whether it ought to be left to the Executive, rather than to the Legislature, to surrender up the old Government to the new. That these questions might be considered, he moved an adjournment, but withdrew the motion at the request of

Mr. Coalter, who suggested a difficulty in case the Constitution should be adopted by a single vote, and that vote be disputed, to whom was the question to be referred? To freeholders? To house-keepers? He asked if the Convention had not power to require a given majority, in order to the adoption of the Constitution? He should be very unwilling to leave it to a bare majority of one.

Mr. Johnson now renewed his motion, and the House adjourned to 11 o'clock tomorrow.

WEDNESDAY, JANUARY 13, 1830.

The Convention met at 11 o'clock, and was opened with prayer by the Rev. Mr. Croes of the Episcopal Church.

The question lying over from yesterday, was on striking out the thirty-first article of the draughted Constitution, which is in the following words:

"XXXI. The Executive Department of the Government shall remain as at present organized, and the Governor and Privy Councillors shall continue in office until a Governor, elected under this Constitution, shall come into office: and all other persons in office when this Constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office till successors shall be appointed, or the law shall otherwise provide: and all the Courts of Justice now existing, shall continue with their present jurisdiction, until and except so far as the Judicial system may or shall be hereafter otherwise organized by the Legislature."

And on appending to the Constitution the following article:

"II. And it shall moreover be the duty of the Executive Department, in and by such proclamation, to command the sheriffs and other officers, directed by law to hold and superintend elections, under the penalty of dollars for failing to obey such

command, to open polls in their respective counties, cities, towns and boroughs, and in the election districts established by law in their respective counties, on the _____, for the election of a Delegate or Delegates, as the case may be, to represent the counties, towns, boroughs and districts, respectively mentioned and described in the third article of this Constitution, and of a Senator to represent each of the Senatorial districts described in the fourth article."

The question being on filling the blanks in this article, Mr. Cooke moved to fill the first blank, relating to the fine of the sheriff, with "\$5,000."

Mr. Wilson proposed to fill it with "\$1,000."

Mr. Scott expressed a doubt of the authority of the Convention to pass any final law. The act of Assembly under which they were acting, gave them no such authority; and as he understood it, this clause was to operate before any final action of the people on the Constitution. If so, they certainly had no authority to inflict any fine.

Mr. Cooke explained. The fine was not to be exacted until after the people should have accepted the Constitution—and their act would give validity to the provision, let it exact what it might.

Mr. Scott withdrew his amendment, and the motion of Mr. Cooke was agreed to—Ayes 50.

So the first blank was filled with "\$5,000."

Mr. Cooke now moved to fill the second blank with these words: "the first Monday in November of the present year."

A desultory debate arose on this motion, in which Messrs. Bayly, Claytor, Stanard, Venable, Randolph and Scott took part. Mr. Cooke's motion was lost, and after several other periods were proposed, the blank was finally agreed to be filled with "the respective court days in the month of November."

[Mr. Randolph's argument for preferring November to October, was, that it was the feast of new corn—all were then in the enjoyment of plenty—and a man felt more independent and more respectable who had corn in his crib, than a man who had corn to buy.]

The third blank was filled, on Mr. Cooke's motion, with "the first Monday in January, 1831."

The question then recurred on agreeing to the article as thus amended.

Mr. Wilson requested, that the question might be divided, and put separately on the several clauses of Mr. Cooke's proposition, *seriatim*.

The question was accordingly first propounded on the first clause as amended.

Mr. Giles enquired if it was the intention of the mover, that the election should be held and completed on the first day? If not, reference must be had to the existing law under the present Constitution.

Mr. Cooke replied, that all laws which the new Constitution did not supersede, would, of course, remain in full force, and that law among the rest. The sheriff would hold the elections just as he did at present.

Mr. Johnson said, that he had no objection to the details of the proposition, if the House should be of opinion that it ought to prescribe the mode of carrying the Constitution into effect, and to confer the duty on the Executive instead of on the Legislature. He was, however, strongly under the impression that it was neither necessary nor proper for the Convention to make any provision on the subject. The act of the Assembly was the charter of all their rights as a Convention. It contemplated, most clearly, the conferring on them no other power than to prepare amendments to the old Constitution, or a new Constitution in lieu of it. That was the whole extent of their authority. When that duty had been performed, the same act declared how their work should be submitted to the people, and how it should be ratified. If he was correct in that view, the whole of the present article was a work of supererogation entirely. (Mr. J. here quoted the act at large.) To him it appeared that that act prescribed in the first place the duty of the Convention, then the manner in which the new Constitution was to be submitted to the people, and next the mode in which it was to receive its ratification if they should approve it. There was nothing left for them to do on the latter part of the subject. They had no authority to repeal any part of the old Constitution.

But if it were otherwise, he asked whether the provisions in the act were not ample, and whether they were not preferable to those in the proposition of the gentleman from Frederick? The difference between the two, was, that according to the one the Legislature was to prescribe the details for the first election, while by the other the Convention were to dispose of those details, and were to dispense with convening any extra meeting of the Assembly at all. The saving of that expense was certainly our object, if the same ends could as well be attained without it; but that was a small item. Was it not more fit and proper that the Legislature should be convened? The act manifestly intended to submit to the existing Government as now organized the question, whether the act of that Government had been answered or no by the means it had prescribed. The Legislature certainly proposed that the decision of that ques-

tion should be submitted to themselves and not to the Executive Department; and if so, this amendment went to make a substantial change in the course intended. They were referring the question to a body possessed of no powers to send for persons and papers, and having no adequate means of ascertaining whether the Constitution had been accepted by the people or not. He would not submit any question of such a character to such a department of Government. The solemnity of a Legislative act was required in order to pronounce on the fact that the Constitution had been duly ratified, should a doubt be started. Should it be affirmed, that in some parts of the State the question on the acceptance of the new Constitution had been submitted to people of all descriptions that chose to vote, and not to the qualified voters merely, the Legislature would have the necessary power to enquire into the matter—to obtain proof, and definitively to decide on matters of fact, connected with the question.

It might be supposed, that under that provision of the act, which empowers the Governor to convene the Legislature, on ascertaining that the Constitution had been adopted by the people, the question was decided. But, he thought otherwise. Somebody must have been appointed to convene the Legislature, and in so doing, the Governor acted of course on mere *prima facie* evidence, on which he was to convene that body, which constituted the grand tribunal of the nation. They alone could properly settle all disputed points that might arise. He thought it infinitely better to leave the matter as the act had provided, since there might be great doubt as to the validity of any decision of the Convention in the case.

Mr. Cooke replied: The first question for the Convention to settle was, whether it was *expedient* to take the course he proposed? On that question, he presumed there could be little doubt. It would save, entirely, the whole expense of an extra session of the Legislature consisting of two hundred and fourteen members. No man who was acquainted with the mode of doing business in Virginia, who was aware of the fondness which existed for talking a great deal before much was done, and knew the *modus operandi* usual in the Legislature, could believe that this extra session would occupy less than at least thirty days; and that must cause an expense to the Commonwealth of at least \$30,000. To save this money, was in itself confessedly expedient. But if the Convention had no right or authority to prescribe such an arrangement, then, no matter how expedient it might be, they, of course, would not do it.

But he maintained that they had the right. The first act of Assembly to which he referred in support of this position was, that of 31st January, 1828, which declared how the sense of the people should be taken as to the expediency of holding a Convention. By that act it was declared that the Governor was to report to the Legislature what was the people's decision. The sense of the people was accordingly taken, and it was found that there was a majority in favour of calling a Convention. The Legislature then enacted a law assembling the Convention, and defining to some extent the powers it was to possess. He admitted this. But still he contended that the members of that Convention, as the representatives of the sovereignty of the people, had a perfect right to recommend to the people a departure from that act. The terms of the law were not so narrow as to preclude them from considering what was the best mode of carrying the new Constitution, if adopted, into effect. They might insert in the instrument they reported to the people, what they intended to recommend as permanent parts of the Constitution, and they might also recommend to the people to adopt a less expensive mode of carrying its provisions into effect. He admitted, that they had no right themselves to modify the provisions of the act of Assembly under which they acted. They could act with no authority in any thing *previous* to the adoption of the new Constitution by the people. But the twenty-first section of that act referred to what was to be done after the acceptance of the Constitution; and the question was, whether it was not competent to the Convention to recommend to the people to modify an act passed by a few of their own servants, by the old Legislature? That was the question.

But it was contended by the gentleman from Augusta, (Mr. Johnson,) that it had been the obvious intention of the Legislature, that the question whether a majority of the people ratified the Constitution or no, should be submitted to the Legislature and not to the Executive. He could not see in the act any thing like that. The act said that the Executive was to examine that question, and when he found that the Constitution was accepted, he was to convene an extra session of the Legislature to carry the Constitution into effect. The returns of the votes were to be made by sworn officers: and they were to be submitted to a sworn Executive—persons holding a high and important trust, and so entrusted, owing to their claims to confidence in the community.

The act assigned it to such citizens to examine into the question of the acceptance of the Constitution; and if from that examination it should appear—appear to whom? To the Executive? that a majority had accepted the Constitution, then the Executive was to convene the Legislature: to do what? To examine the same question again? No, but to carry the Constitution into effect. The extra Legislature thus convened,

had no power to do any thing whatever, but that: they were called to carry the Constitution into effect: that they were to do, and that only. The construction of the gentleman from Augusta, was borne out by the words of the act. The law gave to the Executive and the Executive alone, the power of determining whether a majority of the people had voted for the Constitution. They were to judge: and as soon as they had determined, the act commanded them to convene the Legislature to carry the instrument into operation. The Legislature was not made a Court of Enquiry to see whether the determination of the Executive had been right or wrong. They had no right to interfere, till the question of ratification had been determined. And the moment it was duly certified that the people had ratified the new Constitution, from that moment it became permanent—it rode over the nineteenth section and all other sections of the act of the Legislature, and became the supreme law of the land. Mr. Cooke concluded by expressing his hope, that this mode of carrying the Constitution into effect, and saving an expense of \$30,000, and all the time and trouble of an extra session of the Legislature, would be approved by the Convention and by them recommended to the people.

Mr. Powell said, it seemed a matter of doubt and of difficulty how far the Convention had power to enact such a provision as was now proposed to them. To obviate the difficulty, and at the same time to save expense, he would submit an amendment, the effect of which would be to present to the Assembly now in session a copy of the Constitution, with a request that the Assembly would provide for carrying it into effect on its adoption by the people. If they should not comply, the Convention would but be thrown back on the original law. This would avoid the difficulty of an extra session and effect every object in view.

Mr. Powell then submitted the following amendment:

“Resolved, That a copy of this amended Constitution, be presented to the General Assembly now in session, and that the General Assembly be requested to provide by law for carrying the same into operation: provided said amended Constitution should be adopted by the qualified voters of the Commonwealth, under the amended Constitution.”

Mr. Randolph said, he had been very forcibly impressed by the observations of the gentleman from Augusta upon the motion of the gentleman from Frederick. As to the amendment of the other gentleman from Frederick, (Mr. Powell,) he considered it as premature (to use a very incorrect mode of expression, but one which was very familiarly employed and well understood;) he supposed it to have been urged rather as an argument against the adoption of the proposition of the first gentleman. He had been forcibly impressed by the observations of the gentleman from Augusta. But while attending to him, (as he always did) with the utmost respect, he had been struck with this difficulty: By whose authority did the Legislature pass the very questionable act—I do not mean, however, to question it at present—under which we are assembled here? By the authority of their constituents. And who were their constituents? The freeholders of the Commonwealth. By whose authority do we sit here? Whence is our power? From our constituents. And who are *our* constituents? The same answer must be given—the freeholders of the Commonwealth. Now, the freeholders of the Commonwealth having given their sanction to the very questionable act of the Legislature—I refer to the first as well as the second act on the subject of a Convention—and deputed us here to propose amendments to the old Constitution, or the draught of a new one—to whom, I ask, in the nature of things—did the freeholders suppose the new Constitution was to be submitted for adoption or rejection? Must it not have been to that original authority—to that source and fountain from whence is derived all our authority as a Convention? I mean to ourselves? Let me suppose a case: A majority of the freeholders of Virginia—(Sir, I do not believe it—I do not believe one word—no not a syllable of it) the freeholders of Virginia have consented—being the body politic of Virginia—the fountain of all power in Virginia—have consented that a Convention shall assemble for the purpose of devising amendments to the existing Constitution or proposing a new Constitution in its stead. Now, Sir, the freeholders of Virginia have not yet decided—though they have decided that amendments shall be proposed to them—that with worse than the stupidity of Esau, they shall be deprived of their birthright. The Convention are proposing that the former limits of the Right of Suffrage shall be extended—I will say—*ad indefinitum*. Who is to decide on this question? Those to whom we propose to extend that right? Unquestionably, no: no more than the people of Ohio or Pennsylvania, have a right to decide it. They have no right whatever: they have not a shadow of right.

This Convention proposes to extend the Right of Suffrage beyond its former limits and circumscription. Who are to decide on the question? They, from whom the Legislature and the Convention both derive all the authority they possess, and the latter, all the authority they have usurped—they, from whom the Legislature derive all the power they justly had, and all they unjustly usurped—are they to decide? or

are those to whom we propose to extend this boon? Do you not see the palpable injustice—I was about to add—for it is the only word that will express my idea—the absurdity of this thing? Those from whom we derive all our authority, are not to decide; but, those to whom the power is to be given which we have first taken away from those to whom it belonged. I ask of gentlemen to consider this—I beg them to ponder well upon it—I beseech them to lay it to their hearts, having first presented it to their understandings. The instant those who are not the freeholders of Virginia, attempt to decide upon any Constitution we may propose, one has as good a right to decide as another—the moment you leave the land—the freehold—there is no stopping place—no limit—no line of demarcation—no boundary. So far, so good; we are proceeding under the sanction of the freeholders of the Commonwealth. But we can derive no power from her Legislature to betray those freeholders—to disavow them—to disfranchise our constituents.

Sir, if the freeholders choose to say, we approve of what you propose, there is an end—nothing more is to be said. But, nobody else has any right to speak in the matter. We are *their* agents, acting under *their* sanction.

One word as to the amendment of the gentleman from Frederick, who sits before me, (Mr. Powell.) If the Convention shall resolve to allow others than freeholders to decide the question of the adoption of the Constitution, then it will be necessary that the present Legislature should act in the case: but they will have to act as usurpers. So long as you conferred the suffrage on the *land*—the only safe foundation of free Government, in a landed community—you had record evidence of who were qualified voters; but now, you might as well apply to Babel or to Chaos for any certainty about the matter. Sir, I am afraid I have not done justice to the clear—the perfectly clear opinion I had formed on this subject, while the gentleman from Augusta was speaking. Sir, we are the trustees for the freeholders: and we have no right to betray them. We act by their authority alone. We may to be sure, take in other persons, besides freeholders—violence may prevail. The kingdom of heaven suffereth violence, and the violent take it by force—but we have no more legal authority than Bonaparte, or Attila, or Ghengis Khan: it will be the law of force—and the law of force alone.

Mr. Powell observed, that the gentleman had said his amendment was premature: if so, that of his colleague, (Mr. Cooke,) must be premature also. But he did not consider it as premature: the efficacy of the amendment would depend on the event. If the Convention departed from the Act of Assembly at all, it must be at some period, and why not now? If the Constitution should be rejected, this amendment would of course fall with it: it only operated in case the Constitution should be adopted. As to the other objection of the gentleman from Charlotte, the Legislature which had passed the Act by which they sat as a Convention, had provided that the adoption of any Constitution they might propose, should not depend on the freeholders alone, but on all who should be qualified voters under the new Constitution. That was the law of the land. The gentleman said, the Legislature had acted as usurpers: if that were true as to their original act, how stood the case now? Those very freeholders for whom the gentleman was so zealous, had themselves adopted the Act of the Legislature by their own votes. They had sanctioned this very Act by a majority of five thousand votes. If there had been any usurpation in the first instance, that vote had made the Act legitimate. If the amendment was thought to be premature, he had no objection to withdraw it for the present. But the amendment obviated the only objection his colleague had urged against the provisions of the law; and it settled a question which was at best doubtful.

Mr. Cooke enquired, if the amendment was to be understood as withdrawn?

Mr. Powell, after some hesitation, replied in the negative.

Mr. Stanard thought it manifest that the proposition had better not be pushed at present; it was not the proper occasion. The examples of other States shewed that similar provisions had been reserved until after the vote in Convention was taken on the amended Constitution. It was not to be considered as a part of the Constitution itself, but a mere appendage to it, providing for the mode of giving effect to its provisions.

He would turn the attention of the gentleman from Frederick, in his eye, (Mr. Cooke,) to some considerations not fully developed by the gentleman from Augusta, (Mr. Johnson,) from which the inevitable inference would be, that the Constitution, and the decision that might be had upon it, in order to give any solid satisfaction to the public mind, must of necessity be subjected to Legislative action. He should not enter on the question which had been discussed by the gentleman from Charlotte: but would proceed on the concession, that those were to vote on the Constitution, who were qualified to vote for the most numerous branch of the Legislature. There was no provision of law for this new state of things, which would arise in consequence of the extension of the Right of Suffrage. No *criteria* had been fixed for determining whether voters had or had not the qualifications the Constitution required.

He submitted, whether there was not a cogent necessity for establishing some tests of this kind, which might be a guide to the officers who should superintend elections? The Constitution must go back to the Legislature for this purpose, otherwise it might be adopted or rejected by the indiscriminate votes of persons not qualified. Another serious consideration presented itself. He could anticipate no event fraught with more mischief, or surrounded with more dreadful, because more undefined evils, than the effect of an unauthorised body assuming to itself the functions of a Convention as settled by law. Such a Convention was one of the most fearful events that could occur in the State. To avert this, they ought to cherish respect to the law under which they had been convened. It was better, far better, than the assumption of power by individuals in faith.

Would not the gentleman destroy all respect to the law, if under the authority of that law, he offered a proposition by which the law itself was to be superseded and annulled? Mr. S. said, he would not enlarge upon this idea; but would merely ask the gentleman, if he was willing to set such an example?

He concluded, by moving to lay the amendment on the table.

Mr. Randolph said, he had risen with unfeigned reluctance to say a dozen words on the question before the House. It was plain to him, that there could be none of greater importance, or which seemed to be less understood. I ask, said Mr. R. whether we are empowered to do any thing which shall be binding either upon the people or upon the Legislature? Sir, we have been called as Counsel to the people—as State physicians—to propose remedies for the State's diseases—not to pass any act that shall have in itself any binding force. We are here as humble advisers and proposers to the people. Does not the gentleman from Frederick distinctly see, that if his doctrine be correct, we are giving a Convention power to bind conclusively the people of Virginia *quoad* the Right of Suffrage? to settle that question in the first and in the last instance, without consulting them? I shall be told that we have been clothed with this power. Are we? The Legislature, I grant, have been very kind in clothing us with a power they did not possess. Sir, we do not draw one single jot or tittle of authority from the Legislature of Virginia. If the gentleman's doctrine be correct, then the Legislature of Virginia—who cannot touch the subject without an act of treachery themselves—have given to the Convention power, as to the Right of Suffrage, to bind the people of Virginia: Converting us, in this one single instance, from an advisory into a controlling Council. We can *propose* to the people that the Governor shall be elected by themselves; but we cannot say that he *shall* be. We may *propose*, that under certain circumstances, the Judges may be removed from their offices, but we cannot say that they *shall* be thus removed. Yet we *can* act decisively on the subject of the Right of Suffrage. Here we may say, it *shall* be so.

If that be true, then, by a juggle between the Legislature, who were without the power themselves, and a Convention, who were called only to advise the people, an act is to be done by which the people are to be finally bound. Sir, I wish to God I had the powers of the gentlemen in my eye (Mr. Marshall and Mr. Leigh,) to shew this matter as it is. In the all-important question of the Right of Suffrage, this Convention is to exert an absolute power to decide, without consulting the people at all. How do we derive it? From a Virginia Legislature who never possessed it. To refer to the Legislature is only putting a tortoise under the Elephant. Thus power rests upon the Elephant—the Elephant upon the tortoise—and the tortoise upon nothing. Sir, this won't do. It won't do, Sir. I wish—I would to God, that I had the powers of that gentleman to exhibit this subject as it ought to be exhibited.

Mr. Cooke said, he was unable to perceive how this subject had any connexion with the amendment he had offered.

Mr. Randolph said, he would tell the gentleman. It had grown out of the remarks of the gentleman from Augusta on his amendment.

Mr. Cooke said, the question was in no manner or shape involved in the propositions he had laid before the House. It would be perceived that in the second clause of his amendment it was directed, how the election was to be holden for members of the new Legislature. The question as to whom the Constitution itself was to be submitted, was not in the most distant manner involved. That question must be settled either by the silence of this Convention, in which case the law would settle it, or by an expression of the sentiments of the Convention in the manner prescribed by the law. (Here Mr. C. quoted the Act of Assembly.) It was obvious, that if the Convention should be silent, the Constitution would be submitted for adoption to those qualified to vote for the most numerous branch of the Legislature: the law settled that point. But had they not a perfect right to let in others, under the law or otherwise? That was the question the gentleman from Charlotte had argued. He conceived they had a right to say that the whole white population should be admitted to vote on the question—they had received from the Legislature a *carte blanche*.

[Mr. Randolph here interposed, to ask one question. Whether two persons, neither of whom had any right to an estate, could by joint deed convey it away?]

Mr. Cooke resumed. The Act gave the Convention a right to confer the right of voting on whomsoever they pleased. Had the Legislature any right to give them this authority? It was of no moment whether or not; because the people themselves, the source and fountain of all authority and power, had passed upon that Act of the Assembly: the freeholders of the Commonwealth had elected the members of the present Convention, in pursuance of the provisions of that Act. Here was something under the tortoise: and something solid too, and perfectly substantial. Here was the case of an estate deeded away under mere colour of title; but that deed afterwards ratified by the true and acknowledged owner. The freeholders had recognised and ratified the act of their agents; they had confirmed it by their own deed: and according to that Act, the Convention might, if they so thought fit, submit the new Constitution to the whole people of Virginia, without an exception.

As to the time when the amendment ought to be offered, he agreed with the gentleman from Spotsylvania, that it would have been better to have postponed it until the vote for adopting or rejecting the Constitution in the Convention had been taken. But he had been influenced by the circumstance that the draught of the Constitution itself, as reported by the Committee, attempted to do the very same thing as was the aim of his amendment, but had, in his opinion, made an imperfect provision on the subject. The thirty-first section provided against an interregnum in the Executive and Judicial Departments, but not against an interregnum in the Legislative Department.

Mr. C. then moved to strike out the thirty-first section: (intending to postpone offering his own until after the vote on the Constitution.)

Mr. Leigh observed, that if, ultimately, the proposition of Mr. Cooke should be rejected, this section would have to be re-instated. All who would ultimately vote against that gentleman's proposition, would of course vote against striking out.

Mr. Johnson did not think the section ought to be stricken out. He did not acknowledge it to be an imperfect provision—nor was it an unsuccessful attempt, or any attempt, to carry the Constitution into effect.

Mr. Cooke explained. He had not said it was: he had only said, it was an unsuccessful attempt to provide against an interregnum.

Mr. Johnson said, if that were the case, it was important that the defect should be remedied, and the whole section abandoned. The gentleman admitted, that the section did provide against an interregnum in the Executive and the Judicial Departments, but said that it did not so provide in the Legislative Department. That it did not attempt to do. That was left to the Act under which the Convention had been called. The clause intended no more than to carry the Constitution into effect under the law. It had no purpose of leaving a Legislature clothed with full powers for ordinary legislation, after that end had been effected: but only to provide such a Legislature as should carry the new Constitution into effect. And that it had done. There was no need to strike out the clause: the gentleman's article would not interfere with it.

Mr. Cooke replied. If the section did not intend to provide a Legislature prepared for ordinary legislation, it was defective in not so intending. So soon as the old Legislature should have provided to carry the Constitution into effect, it would be *functus officio*: and then there would be a perfect Legislative interregnum of several months, until the new Legislature should be organized. This ought not to be.

The question was now put on striking out the thirty-first section, and negatived.

Mr. Cooke then withdrew his amendment for the present.

The question now recurring on the engrossment of the draught of the Constitution for a third reading,

Mr. Tazewell asked that it be taken by ayes and noes.

Mr. Johnson said, that if it was desirable to get the sense of the Convention on the question which had been commented on by the gentleman from Charlotte, this was the proper time to do so. After the third reading, the Constitution would not regularly be open to amendments. He had understood the act of Assembly in the same manner as the gentleman from Frederick. The Constitution might be submitted to the qualified voters, or to any others whom the Convention might please to declare such. If the sense of the House was to be expressed on that subject, now was the proper time. The act of the Assembly would have had no authority, but from the act of the people upon it. He agreed with the gentleman from Charlotte, that the Legislature had no right to pass such an act; but, it had been legitimated by their constituents.

The act had become their own act by the sanctioning it, and the people had thereby given the Convention power to submit the Constitution to whom they thought fit.

Mr. Randolph. One word in reply to the gentleman from Augusta—I do not know—I am finite—and cannot know—but there is no fact on which I have a clearer conviction—than that when the freeholders of Virginia voted, they voted on the single and naked question, "Convention, or No Convention," and on no other question whatever. I shall not, I hope, be condemned as overweening and vain, when I profess to believe, that I possess at least the average intelligence of the freeholders I repre-

sent—that take them one with another, I have as much sense as the average of them : yet I say, that this provision of the law never entered my head at all—and I will engage, that it never entered the head of one man in ten thousand of all those who did vote. The only question the people did decide upon, was the question of Convention, or No Convention. They never decided any other—and could not. I have as much respect for the people as any one. I am one of the people. It is common now-a-days to profess vast respect for the people. This bowing to the majesty of the people, as Patrick Henry says, is death to the independence of the people. Sir—I have come to the conclusion, from much observation, that the people are incapable of acting but by their agents. Sir—I once thought myself to be a Republican—and I believe I was thought by some to be, if any thing, rather an over-violent Republican. But now, I find gentlemen gone far beyond me—yes, Sir—they beat me hollow—I am left behind—and begin to be thought an Aristocrat by those whom I think ultra Jacobins.

The people cannot act unless to their destruction, but by agents. They are like the infirm owner of a large estate. A man who possesses a large plantation, and is in feeble health, gets an overseer. If he should undertake to superintend it himself, the infallible effect would be the loss of the crop—and the next thing we should hear of, would be a deed of trust for his estate—and away it goes. So the people must act—they can act safely only by their agents. Yet they may be lured to their destruction by elections in November, and elections in April—at the feast of new corn, or in the season of want and scarcity, when they are called to pass upon an act of Assembly, containing thirty or forty sections—of which one-tenth—no, Sir—not one-tenth—even of the Assembly that passed it—know the true meaning.

Sir, I have been too long acquainted with Legislative bodies, not to know something about them. They are not themselves acquainted with the meaning of their own acts. They must be carried to the General Court, to be settled one way—and then to the Court of Appeals, to be settled another way—and it is not until the question becomes *res adjudicata*, that the meaning of their act is known. Yet you expect the people to pass on an act of I don't know how many sections, at the polls. Sir, the people did no such thing. They could not do such a thing. As to the act of the Legislature's being cured by the assent of the freeholders of Virginia, the freeholders knew nothing about it. I am sure I did not.

Mr. Campbell of Bedford moved to strike out in the twenty-ninth section the word “concurrent,” and insert the word “joint.”

The question was decided by ayes and noes as follows :

Ayes—Messrs. Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, George, M'Millan, Byars, Chapman, Mathews, Oglesby, See, Morgan, Campbell of Brooke, Wilson, Campbell of Bedford, Saunders and Cabell—22.

Noes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clifton, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Campbell of Washington, Roane, Taylor of Caroline, Morris, Garnett, Floyd, Duncan, Laidley, Summers, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentis, Grigsby, Claytor, Branch, Townes, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—73.

THE JUDICIARY QUESTION.

Mr. Scott then addressed the Convention as follows :

It is probable that many members of this Convention think, that my sensibility on the subject of the Judiciary is a morbid sensibility. Possibly it is so. But, whether it be morbid or not, as it exists, I must obey its impulse.

Mr. President—I know very well, that mankind are prone to refer our actions to selfish motives, when such motives can be found. And unhappily, such is the frailty of our nature, the suspicion that we are prompted by them, is often but too well founded. I cannot expect that I shall escape on the present occasion. I am well aware, that the zeal which I have manifested in relation to this subject, may be, and probably by some is, attributed to sinister views. It is at all times exceedingly painful to me to speak of myself. I know very well, that a man seldom does himself a service by such a course. But, there are occasions on which it is indispensable that he should do so, and this appears to me to be one of them.

It has been a maxim with me, that our first care should be to do that which in our conscience we believe to be right ; our second, to have the credit of it. But, Sir, whilst I place reputation next in order to virtue, there is a vast space between them.

Upon the present occasion, I shall pursue that course which is pointed out by duty, let the consequences be what they may.

It has been my misfortune, ever since I arrived at manhood, if misfortune it may be called, to be in the minority on the great political questions which have divided this

country. Previous to the late Presidential election, I was in the minority—that is, I was opposed to those in power. The present Administration had been in power but a short time, before I found myself in the minority again. Perhaps it is a vice of my nature, that I cannot remain with the majority. You will allow, however, that it is not the way to get office. Mr. President, I take this opportunity publicly to declare, that there is not an office or place in the gift of the General or State Government, which I would accept. I avail myself of this occasion, to record my own evidence of my total unfitness to fill any public station. Sir, I have laboured under disease for the last seven years of my life, and I find that my health, instead of improving, continues to decline. I declare myself to be utterly incapable of either bodily or mental labor. I take this public occasion, to record my evidence to the end, that if at any time hereafter, I should be mad enough to solicit office, I may be condemned out of my own lips. I have trespassed thus much on the indulgence of the Convention, with a hope that justice may be done to my motives, should I be driven by events to change my course in relation to the great question which has so long agitated this body.

At a very early period of my life, I imbibed the sentiment, that no form of Government, however excellent in other respects, can long secure the liberty and happiness of the people, without an independent Judiciary. This sentiment was deeply planted in my bosom. It has grown with my growth, and strengthened with my strength. For what purpose, Sir, do we enter into civil society? For what purpose is all this machinery of Government constructed? Why are laws enacted? To protect the weak against the strong. The strong can protect themselves without the aid of laws. To what end shall laws be enacted, if they be not ably and justly administered? Where will the weak find refuge and protection, but in your Courts of Justice? If your Judges are dependent, will they depend upon the weak or the strong? I did not rise to enter into an argument, and I will not pursue the subject farther. If I rightly understood the exposition of the proposed Constitution, given by the gentleman from Norfolk the other day, the Judges will be completely dependent on the Legislature. According to that exposition, the Legislature, by abolishing the Court, may deprive the Judge of his office; and by consequence, that office is held at the will of a majority of a bare quorum. This is not my construction of that instrument. The twenty-third section of the draught reported by the Committee, declares, that the Judges shall hold their offices “during good behaviour, or until removed in the manner prescribed in this Constitution.” Now, there are only two modes “prescribed in this Constitution,” by which a Judge may be removed from office. One by impeachment, the other by a concurrent vote of two-thirds of both Houses of the Legislature. This enumeration, I conceive, excludes any other “manner” of removal; and by consequence, a removal by mere legislation. The twenty-sixth section declares, that the Judges shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office. Hence, I should infer that as a deprivation of office by abolishing the court, is not one of the modes “prescribed in this Constitution,” the office would remain, although the court should be abolished: and whilst the office remains, the right to the salary continues. But, Sir, I will not venture to place my opinion in opposition to that of the gentleman from Norfolk, who was one of the Committee that draughted the Constitution. If that instrument goes down to posterity, with a construction sanctioned by the name and authority of that gentleman, there can be but little doubt that his construction will prevail; and a dominant faction can, by a simple repeal of a law, sweep every Judge from the bench. I rose, Sir, for the purpose of enquiring of the members of the Select Committee, and more especially of my friend from Richmond, (the Chief Justice,) who I understand to be the author of that part of the Constitution which relates to the Judiciary, whether I rightly understand the exposition of the gentleman from Norfolk, and whether the other members of the Committee concur in that construction. Upon the answers given to this enquiry, my vote upon the Constitution will depend. Sir, I do not apprehend, be the construction of this Constitution what it may, that in the short remnant of my days, I shall suffer any mischief. I do not apprehend, that in so short a period, the character of Virginia legislation will so change, as that the Judicial tenure will be invaded by such means. But, Sir, we are making a Constitution for posterity. We have witnessed such invasions in other States. It would be presumptuous to suppose, that they never can occur here. It is our duty to guard against them.

Mr. Marshall said, that it was with great, very great repugnance, that he rose to utter a syllable upon the subject. His reluctance to do so was very great indeed; and he had, throughout the previous debates on this subject, most carefully avoided expressing any opinion whatever upon what had been called a construction of the Constitution of the United States by the act of Congress of 1802.

He should now, as far as possible, continue to avoid expressing any opinion on that act of Congress. There was something in his situation which ought to induce him to avoid doing so. He would go no farther than to say, that he did not conceive the Constitution to have been at all definitively expounded by a single act of Congress.

He should not meddle with the question, whether a course of successive legislation should or should not be held as a final exposition of it: but he would say this—that a single act of Congress, unconnected with any other act by the other Departments of the Federal Government, and especially of that Department more especially entrusted with the construction of the Constitution in a great degree, when there was no union of Departments, but the Legislative Department alone had acted, and acted but once, even admitting that act not to have passed in times of high political and party excitement, could never be admitted as final and conclusive.

When the report had been made by the joint committee, and a plan had been laid before that committee, no declaration was made that the clause since expunged was necessary to prevent this construction of that report. The words had been introduced, not for the purpose of making the report conform to the act of Congress, but because they furnished a ready mode of disposing of the Judicial Department. If the words had not been used in the Constitution of the United States, nothing was more probable than that the very same words would have been employed in the report. He said, as being the individual who had draughted the article, that he had not had in his mind the clause of the Federal Constitution alluded to, and its construction by Congress. When the article was introduced, it had not been for the purpose of acknowledging the justice of that construction, but to prevent the possibility of it: it was considered as possible, and barely possible, that such a construction might be given.

He did not wish to enter at all into the argument. All must have witnessed the caution with which he had avoided doing so. But he said freely, that the present Constitution ought to be construed *in its words*, and not in the opinion any member might have expressed upon it. They entertained different opinions: those opinions were not to regulate the construction of the Constitution, but its own words alone were to regulate the construction of it. And so far as he had any right to protest, he did protest against his individual construction, in any mode, being engrafted into the Constitution. Let the Constitution speak its own language, and be construed by those whose office it was to construe it.

Mr. Tazewell followed Mr. Marshall—and expressed an exactly opposite opinion. He vindicated the passage of the law for abolishing the newly appointed Judges, at the very close of Mr. Adams's administration. He contended that that act was perfectly constitutional and proper—and that the course then taken by Congress had fixed the meaning of the words in the Constitution of the United States, which had been copied into the proposed Constitution of Virginia.

He was followed by Mr. Johnson, who conceded that the abolition of the Judges at the commencement of Mr. Jefferson's administration, however objectionable it might seem at first, had been sanctioned by the acquiescence of the people.

Mr. Giles rose in reply to Mr. Marshall:

Concurring in the belief, that the interpretation which has hitherto been put on the terms of the Federal Constitution, will be put on the same terms, if used in the Constitution we are now making, and acting on that presumption, I conceive it unnecessary that any other explanation should be made, and hope that the amendment may be withdrawn: I prefer the Constitution as it now stands.

Although I have paid the utmost possible attention to the opinions and arguments of the gentleman from Richmond (Mr. Marshall,) for whom I entertain the highest respect and regard, I cannot for my life find out how it is that an office should exist in a court, while the court itself does not exist, but is completely *functus officio*. Such a position appears to me to be a perfect contradiction; as much so, as it would be for us to declare, that a man shall enjoy his life after he is dead; and the effect of one declaration would be much the same, with that of the other. The proposition contains a contradiction in terms, and is in my judgment utterly inadmissible.

There is another reason which confirms me in my opinion as to what will be the interpretation put upon this part of the Constitution. The gentleman, it is true, says that he has not officially examined the point; but such was the impression on his mind, when the act of Congress was passed which limits the continuance of the Judge's office, to the existence of his court. Now, I have given the utmost attention to this subject. I formed an opinion at the time, which I publicly expressed. I have thought of it a thousand times since, and I have examined every act passed on the subject from that day to this, and I have no more doubt now than I had then, as to the true interpretation of the clause. It is a fundamental principle, which reigns throughout our institutions, that compensation and services should correspond to each other. The compensation of a Judge is paid him, not for his good behaviour, but for his official services.

The sensibility of the gentleman from Fauquier, (Mr. Scott,) on the subject of Judicial independence, is so very great, that he himself supposes it may be morbid in its character, and I have no doubt that it is so. Nor is it confined to that gentleman alone: it extends to a vast many others who seem to labour under the same morbid sensibility with himself. The gentleman insists, that by the Constitution as it now

stands, the independence of the Judges is not provided for. I am of a different opinion. I am prepared to go as far as any gentleman in favour of the independence of the Judiciary: I consider independence in a Judge as valuable as any gentleman can do; but I would not have independence extended into inviolability. I am as hostile to that, as I am favourable to their independence, and shall always be so, while republican government continues to be founded on the principles of responsibility. Sir, what do gentlemen want? What more would they have? The utmost security is given that a Judge shall continue to receive his salary, so long as he renders Judicial services. Ought he to have it any longer? Would any one think of advancing the same claim with reference to any other officer but a Judge? Would any man say that in a republican government, a public officer is to receive the public money, any longer than he renders service to the public? Yet that is the amount of what is now claimed in behalf of the Judges of Virginia: That they shall receive their salary after the duty of their offices has ceased. A Judge when out of office is no more independent than any other citizen. Being firmly convinced that such not only will but ought to be the construction put upon the Constitution as it stands, it will be more acceptable to me, if the gentleman will consent to withdraw his amendment.

The very worthy and highly respectable gentleman from Richmond, (Mr. Marshall,) lays much stress on the fact, that there has been but one decision by the Congress of the United States, giving an interpretation to the language of the Federal Constitution as to the tenure of the Judicial office. He says, there has been but a single decision; but the gentleman has not kept his eye on all the events connected with this subject. There have been many decisions: So many, that the point has always been considered by me as completely surrendered. Applications for compensation have, again and again, been made, and have been rejected over and over. Has not our whole Judiciary establishment been going on upon that avowed principle? and does it not exist on that foundation at the present moment? If not, on what principle does it rest? Upon none. There is no other principle. That is the law on which the entire system stands. I have no earthly doubt that such will be the decision. I think indeed it is highly probable, that the Judges would decide differently. But, thank God! the decision is left to the Legislature, and not to the influence of that *esprit du corps*, which is ever found to exist among persons holding the same employment, whether they be Judges or Councillors, Consuls or Kings. I wish that the sense of the Constitution may be decided on its own words, and on the experience of the effect of those words for thirty years. It will be settled, I doubt not, that according to the existing arrangement the Judges are independent; that this is the real definition of an independent Judiciary, and that its independence is as abundantly secured by this Constitution as it ever ought to be.

Mr. Marshall observed, that the present was not the first example which had occurred in the debates of this Convention, nor was it likely to be the last in the debates of this or of any other deliberative Assembly, where gentlemen held opinions directly opposite to each other, and yet each side thought their own so perfectly clear as not to admit the possibility of doubt. But declarations of such perfect confidence on the part of those who held certain opinions, did by no means render it indispensable that others should subscribe to the same. The ultimate decision must rest, not on the confidence of conviction, but on the reason of the case. His whole wish was, that this question should go forth, uninfluenced by the opinion of any individual: let those, whose duty it was to settle the interpretation of the Constitution, decide on the Constitution itself. He did not say that he was perfectly clear what that decision would be, but he wished it to rest on the opinions held at the time by those who made it, and who were responsible for such opinions, and not by the views of particular individuals in this Convention. If any other clause was requisite, let it be added. Whatever weight the decision of Congress in 1802 was entitled to have, let it have. But let not the sense of this instrument be judged of by the opinions of individuals in this body. He had already stated what were the views he had held in the Judiciary Committee, and the gentleman from Augusta, (Mr. Johnson,) had stated correctly what took place in the Select Committee: the two clauses adopted by the Convention were found to be in utter repugnance, and therefore the Committee had resolved to omit both, and report the article in the form which it now assumes. The question now before the House had once been decided already, but he did not wish to prevent the decision of it now.

Mr. Giles expressed his hope, that the gentleman who had moved the present amendment, (Mr. Cabell,) would consent to withdraw it. The gentleman last up had assigned the best of reasons why it had been omitted by the Committee, viz: that it involved a palpable contradiction in terms, to another clause in the same instrument.

Mr. G. declared his intention to vote for the clause with the amendment rather than reject it: but repeated the expression of his hope that the amendment would be withdrawn.

Mr. Scott said, the gentleman from Amelia greatly misconceived him if he understood him to say that he *presumed* the sensibility which he (Mr. S.) felt on this subject was morbid. He had said, that other gentlemen might so consider it. For himself, he considered it healthful. He considered the insensibility manifested by gentlemen on the other side, as morbid. Upon the question under consideration, it appeared that the members of the Committee differed. The gentleman who sat near him, concurred in opinion with the gentleman from Norfolk. [Mr. Johnson said, that he had not expressed it as *his* opinion, that that was the correct construction, but that it was the construction which would in practice be put upon it: he did not think it the true construction.] Mr. S. said, he was glad to hear that the gentleman from Augusta agreed with him as to the true construction of the Constitution. But it appeared that a doubt rested upon it; and he hoped one way or other that doubt would be removed.

MR. CABELL addressed the Convention as follows:

I used to express my extreme mortification and unfeigned astonishment, at the construction given to the Constitution as reported by the Select Committee to the House, by the venerable and learned gentleman from the city of Richmond. It must be within the recollection of every gentleman present that it was on my motion, that the House settled the question, in terms, not to be misunderstood, that, the abolition of a court, necessarily and inevitably carried with it the abolition of the office, and of course the salary of the Judge of such court—and that by a most decisive majority, upon a call of the ayes and noes. The words of the amendment, taken in connection with that portion of the resolution, imported that idea, to which it was attached. The whole subject was then debated, by gentlemen of great eminence, who were regarded as the luminaries of constitutional law, that such was its fair, natural, and necessary construction, as it went from the House to the Select Committee. But now, Sir, what do we hear from the yet higher authority of the gentleman from the city of Richmond? He now thinks, that the fair construction of the Constitution reported by the Select Committee, as modified by them, must be, that notwithstanding the abolition of a court, the Judge thereof will still retain "*his office*," and, though he may have no duties to perform, will be entitled to enjoy his salary. I ask, Mr. President, whether it is consistent with the honour of the Committee, or of the House—[here the Chair called to order,] to which Mr. C. replied—I mean, Sir, no imputation on the House or the Committee—but what I meant to ask, was, whether it would be consistent with the honour of the Committee or the House, after the latter had, in the most solemn manner, passed affirmatively upon a question, and sent it to the Committee for the revision of its phraseology merely—to permit an important and substantive proposition, asserting a great principle, applicable in all time to come to the future legislation of the country on similar subjects, to be gotten round either by leaving it out altogether, or by the use of language defeating its object? I earnestly trust they will not. It is perfectly evident, that the public mind will not be satisfied, and that it ought not to be. If the construction put upon this article, (the 25th,) by the three last named gentlemen should prevail, the time may, and in all human probability will come, when the people will have saddled upon them, not a battalion only, but an army of civil pensioners. I cannot contemplate such a state of things without the extremest repugnance, and without being impelled by an imperious sense of duty to my constituents, to endeavour to avert it, by all the means in my power.

Gentlemen may possibly imagine, that my course on this subject, is dictated by some private grief, some pique or prejudice against the Judges, or some of them. God forbid that such should be the fact! So far from this being the case, Sir, there sits on the bench of the highest tribunal in this State, a gentleman endeared to me by every tie, that can sanctify the affections of man. I cannot, nevertheless, through tenderness to the gentlemen, for many of whom I feel the greatest personal respect, who happen to occupy at present the seats of justice, consent to see entailed upon my country, the most grievous and oppressive Judicial system. Is it not a fact, perfectly notorious, that in some parts of the State, for months and years, the temples of justice have been closed? That the supplications of the widow—the cries of the orphan, and claims of the poor, have passed unheard and unheeded? Yes, Sir, it is an indisputable fact, that in numerous instances, the *delays* of justice have amounted to a *denial* of it. This state of things has continued too long. It is a grievance too intolerable to be patiently borne. This thing "was not done in a corner"—it is notorious. Is it wise then, to tie up the hands of the Legislature? To restrain the power of the representatives of the people, to modify or abolish, from time to time, and to re-organize the Courts of Justice, in such manner as the public good may require, without creating a necessity for continuing, at the same time, a privileged order—a band of civil pensioners—a set of useless or incompetent officers—enjoying *salaries* at the public expense, without rendering an equivalent service? This, it appears to me, is carrying the idea of Judicial independence, to a most pernicious extreme, while it betrays the want of a just confidence in the wisdom and integrity of the re-

presentatives of the people. For myself, I deem it my duty, so far as may depend upon me, to secure to the people, either directly or by their representatives, a real, not a nominal responsibility of their officers, in all the departments of their Government. To my mind, *independence* is one thing—*irresponsibility* is another, and quite a different thing. You create a responsibility of the officers, in all the departments, the Judicial only excepted. Why this distinction? I know of nothing in the situation, or functions of a Judicial, any more than in that of any other officer, requiring him only to be placed above the reach of the laws, ordinary or extraordinary. I ask pardon of the House, for having so unexpectedly to myself, trespassed thus long on its attention.

Mr. Cabell then moved to add to the twenty-third article in these words:

"No modification or abolition of any court, shall be construed to deprive any Judge of his office; but such Judge shall perform any Judicial duties which the Legislature shall assign him; but if no Judicial duties are, assigned him by the Legislature, he shall receive no salary in virtue of such office."

Mr. Cabell's remarks in support of his amendment:

I feel great embarrassment at obtruding myself on the attention of the House on any question, especially this, (the Judiciary,) in relation to which, perhaps, more than any other department of the Government, I might naturally suspect myself of want of information. It was not my fortune, Sir, to be brought up at the feet of Gamaliel. Yet, I cannot be insensible to the effects resulting from the existence of a *doubt*, on this important question. And I must confess that it is not a little extraordinary and surprising to me, to observe that gentlemen who have hitherto acted with me on this subject, and to whose abilities, my amendment to the original resolution of the Committee of the Whole was mainly indebted for its passage, should now be willing to see the same *doubt* remain. It was maintained on this floor by gentlemen of great ability, that the fair construction of the Constitution as reported to the House by the Select Committee, went to the abolition of the *office of Judge*, and consequently, of the salary, upon the abolition of the court. In the expression of that opinion, you, Mr. President, and the gentleman from Norfolk, (Mr. Tazewell,) and the gentleman from Amelia, (Gov. Giles,) concurred. Those opinions thus publicly given, were satisfactory to the House, and to me, and it was at their instance, that I withdrew an amendment which I had offered to the twenty-second article of the Constitution. But, now, Sir, when the able gentleman from Fauquier, (Mr. Scott,) declares that he dissents from that opinion—when the gentleman from Augusta, (Mr. Johnson,) declares it, as his opinion, that the act of Congress of 1802, was an erroneous interpretation of the same words in the Constitution of the United States; and when, above all, the Chief Justice of the Supreme Court of the United States declares in substance, the same opinion, can gentlemen deem it inexpedient to adopt an amendment which will definitively settle the proper construction? I trust not. And I earnestly hope that some gentleman, more able than myself, more experienced and disciplined on legal questions, and more conversant with the construction of Constitutional law, will move such an amendment to the Constitution as it came to the House from the hands of the Select Committee, as will forever put this question to rest. If no other gentleman will make such motion, I will, in the hope of effecting this object, move as an amendment the words heretofore adopted by the House on my motion.

Mr. Tazewell wished to say one word: It will be recollected by the Convention that he had given his support on a former occasion to an amendment substantially the same as that now offered. When the resolution was introduced a second time, the same gentleman offered the amendment which he now proposed, and it was rejected by the House.

Mr. Cabell begged leave to correct this statement. No vote had been taken on this specific proposition: he had withdrawn this, and offered another. It was on that other, that the House had passed, but not on the present amendment.

Mr. Tazewell replied, the other amendment might have been somewhat different in form, but its object and its effect were substantially the same with this; and it was negatived by a large majority. Mr. T. said he had voted with the majority on that occasion, and should pursue the same course now, by voting against the present amendment. In stating his reasons, he should not detain the Convention very long, certainly not so long as some gentlemen had detained them on questions of less importance. When the original resolution was introduced by the Judiciary Committee, the venerable chairman of that Committee said, that the words of the resolution had been employed expressly to guard against the construction which had been given to the Federal Constitution on this subject. The gentleman from Pittsylvania had then offered this amendment with a view to neutralize the effect of the words as reported, and it had carried; the whole was then referred to a Select Committee; that Committee found that certain words had been introduced into this Constitution which were taken literally from another, where they had received a fixed and settled construction. They then found a clause added, that was intended to prevent that con-

struction, and then a third clause which went to neutralize the effect of the second. Why should the instrument be encumbered with two paragraphs which directly contradicted each other? But this was not all. If those clauses were incorporated, other effects must follow, which Mr. T. was not prepared to sanction. You admit, said he, the absurdity, (I beg pardon for employing the term,) the impossibility that the officer should continue as such, after the abolition of his office; that the office of the Judge shall continue, after the tribunal to which he is attached is abolished. It is a doctrine I cannot conceive, and never can consent to admit, and the clause which declares it is at war with other powers in the instrument. By one clause you declare that the compensation of a Judge shall not be diminished during his continuance in office; by a second clause you declare that his office shall remain after his court is abolished; and then by a third you say, that though his office remains, his compensation shall not continue, unless under certain conditions. I cannot consent to these contradictions, and I shall therefore vote against the amendment: yet I favour the object the gentleman has in view, and I am very sure that without the amendment, that object must be accomplished by the construction that will be put upon the Constitution.

Mr. Scott now offered an amendment to the amendment, by which he proposed to strike out the last clause and insert the following: "Unless such court be abolished by the concurrence of two-thirds of the General Assembly."

Mr. Claytor demanded a division of the question on striking out and inserting, and it was divided accordingly.

Mr. Marshall submitted to his friend from Fauquier, (Mr. Scott,) whether his amendment would not produce an effect which he did not contemplate? A case might occur, where a majority of the Legislature desired to abolish a court, not out of any hostility to the Judge, but because they thought its abolition would promote the public good: the amendment would prevent such a measure, unless two-thirds of both Houses could be obtained in its favour.

Mr. Scott replied that his object was, to put a check upon the Legislature in depriving a Judge of his office by the abolition of his court.

Mr. Stanard proposed to modify Mr. Scott's amendment by striking out the words "modification or."

Mr. Scott accepted the amendment.

Mr. Claytor asked the ayes and noes on the amendment as thus modified.

Mr. Giles said, it would be with great reluctance he should be compelled to vote. He thought the remarks of the gentleman from Norfolk, (Mr. Tazewell,) had great force, yet if the mover would not consent to withdraw his amendment, he should be compelled to vote in its favour.

Mr. Cabell thereupon expressed his willingness to withdraw his amendment with the consent of the Convention.

Mr. Stanard objecting,

The question was put on granting leave, and being carried,

Mr. Cabell withdrew his amendment.

Mr. Scott thereupon, moved the following, to be inserted as a substantive article in the Constitution:

"No law abolishing any court shall be construed to deprive a Judge thereof of his office, unless two-thirds of the members of each House present, concur in the passage thereof: But the Legislature may assign other duties to the Judges of courts abolished by any law enacted by less than two-thirds of the members of each House present."

Mr. Giles: Is it possible that the gentleman from Fauquier can conceive such an article necessary to the independence of the Judges? On all other subjects a majority of the Legislature is sufficient for action; but here, after clogging the removal of a Judge by all possible impediments, it is now proposed that in an act of ordinary legislation, intended to suit the public institutions to the changing state of the country, the assent of two-thirds of both Houses is to be required. In the modification of the courts, it may become necessary to lessen the number of the Judges and thus leave supernumeraries; yet under the idea of supporting the independence of the Judges, this cannot be done unless two-thirds of both Houses concur. A bare majority of the Legislature may not organize a court, so as to adapt it to the better administration of the purposes of justice. If the Convention are ready for that, God knows where they will stop. If such partiality exist in the House toward the Judges, that in order to save them the business of the country must not go on, nothing more is to be done. But this is not independence; it is privilege.

Mr. Scott said, there was not a shadow of ground for such a construction. The article he had proposed, did not require the assent of two-thirds of the Legislature for the abolition of a court. It merely provided that if the court should be abolished by a vote of less than two-thirds of both Houses, such abolition should not deprive the Judge of his office: the court might go, but the Judge would remain, and be ready to receive such other duties as the Legislature might assign him. If they neglected to assign him any, his idleness would not be his fault, but theirs. Mr. S. said his whole

purpose was, that it should require two-thirds of the whole Legislature, to destroy the office of a Judge.

Mr. Randolph said, he would endeavour to state as succinctly as possible the reasons why he should vote in favour of the proposition of the gentleman from Fauquier. At the very commencement of my public life, or nearly so, I was called to give a decision on the construction of that clause in the Federal Constitution which relates to the tenure of the Judicial office; and I am happy to find, that after the lapse of thirty years, I remain precisely of the same opinion that I then held. If a law should be passed *bona fide* for the abolition of a court, which was a nuisance, and ought to be abolished—Mr. R. said he considered such a law as no infringement of Judicial independence: but, if the law was enacted *mala fide* and abolished a useful court, for the purpose of getting rid of the Judge who presided in it, such a law was undoubtedly a violation of that independence: just as the killing of a man might be murder or not, according to the intention, the *quo animo* with which it was done. He said, that it could not be necessary to recount to the gentleman who occupied the Chair, (Mr. Barbour,) the history of the decision which was given in Congress, as to the true intent and meaning of this part of the Federal Constitution. Parties had never run higher than at the close of the administration of the elder Adams, and the commencement of that of Mr. Jefferson. After efforts the most unparalleled, Mr. Adams was ejected from power, and the downfall of the party attached to him was near at hand. After this decision by the American people, when they were compelled to perceive that the kingdom was passing from them, in the last agonies and throes of dissolution, they cast about them to make some provision for the broken down hacks of the party; and at midnight, and after midnight on the last day of Mr. Adams's administration, a batch of Judges was created, and bequeathed as a legacy to those who followed. The succeeding party on coming into power, found that they must consult the construction of the Constitution to prevent the recurrence of such a practice; because, if the construction should be allowed under which this had been done, it would enable every political party, having three months notice, of their departure from the helm of affairs, to provide for themselves, and their adherents, by getting up a Judiciary system, which would be irrevocable; a city of refuge where they would be safe from all approach of danger. To avoid such a result, it became necessary to abolish the system which was then believed to be injurious, and which experience has proved to be unnecessary. Mr. R. said, that he was one of those who voted for the decision which declared that the court might be abolished *bona fide*, and that the office of the Judge should cease with it. Mr. R. said, there was no cause for apprehending a similar abuse of power on the part of the Legislature of Virginia, and proceeded to give his reasons for this opinion. He remarked, that in political faith, as in religious faith, no man could tell what might be believed hereafter, and he saw a good reason for making a distinction on this subject, between the Legislature of a State, and that of the Union. It was agreed on all hands that the mere modification of a court did not abolish the office of a Judge, and the Legislature was left free in that matter to play the whole gamut; they might modify and re-modify to their heart's content, until the courts became as uncertain as the law. But such a state of things could never occur, as that a party having timely notice that they must go out of power, should make use of the Judiciary department to make provision for themselves and their friends. But granting, that such a measure should ever be attempted, could there be the least doubt that a court got up for such an end, would find two-thirds of the Legislature prepared to abolish it? There could be no such doubt. Under the proposed arrangement, there could be as little danger that a court would be abolished, for the purpose of getting rid of a Judge. Some confidence must be reposed in the Legislature. Under the Constitution at present in force, that body had full power to abolish and regulate the courts *ad libitum*. The whole purpose of the gentleman's proposition, as he understood it, was to prevent them from taking indirect and undue means to get rid of an obnoxious Judge. Under this impression, he accepted with perfect cheerfulness and heartiness, the amendment proposed by the gentleman from Fauquier.

Mr. Coalter said, that he had been opposed in sentiment to the gentleman from Augusta, to the gentleman from Amelia and the gentleman from Norfolk, as to the position in which the Constitution stood, and as to the construction which was likely to be given it: he had then determined to give his reasons why he could not vote for it; but as long as there was life there was hope, and he trusted he should be allowed briefly to state his sentiments at this time.

Mr. C. then said, Mr. President: I came here this morning prepared to vote against the passage of the Constitution to a third reading, not knowing, or having the least idea that the amendment, now under consideration, would be offered.

One of the grounds of my intended vote being now under consideration; and in as much as there is hope, as long as life lasts, I will now, briefly as I can, submit my

views on this subject, hoping they may have some effect on the question before us; if not, they will stand in print, as the reasons for my final vote.

I never can vote for a Constitution, which shall provide for a *batch*, or *litter* of Judges—(terms which may be very appropriate to some *future* set of Judges,) who are to hold their offices at the *mere will* of the Legislature—who may be put out of existence by that body, either by sinking the boat under them, and drowning them—by starvation—cruel and inhuman abuse and destruction of character, or by any other wilful and deliberate slaying.

As to the present incumbents being turned out by this body, unless that is necessary to give effect to the new Constitution, I give no vote, and say nothing, except that if it inflicts no wound on the State, it inflicts none on me which I would avoid *by turning on my heel*.

But I have been alarmed for my country from the moment I was told that, in future, I am to respond to another tribunal than God and my conscience.

If I am corrupt, unmindful of my duty, and unfaithful to my oath; if I commit any *crime*, I have neither God nor my conscience with me; and my country must punish me, when I am *fairly convicted*. This is my situation under the present Constitution.

I am now advised, though, that Judges may become *odious* to the people and their representatives, and they must be subject to be turned out by those representatives, as they may be by the people; and that a *responsible* Judiciary, *in this sense of the term*, may nevertheless be an *independent* Judiciary.

This may be according to the *march of mind*, and the true *republican principle*, as understood in these latter days.

Our ancestors did not think so, and provided for no such case in the Constitution they made for us.

When I was a boy, there was a book in use called *Common Sense*. It was read at meeting-houses on the Lord's day.

I well recollect when, at the beginning of the revolutionary war, some one got on a stump, between sermons, and read *Common Sense* to the people.

When I advanced in life, about the time of the French Revolution, there was another book, read by some, called the *Age of Reason*. This was not read on Sundays I believe, except by such as would not object to read the cards on Sundays.

I have lived in this *Age of Reason*, and yet I have some distrust in the doctrines of the *March of Mind* that has taken place since the days of *Common Sense*.

Are we to recommend this Constitution to the people by the arguments used here?

That our Henrys and Pages, and Taylors, and Nicholases, and Pendletons, and Masons and Wythes, and a host beside, *were aristocrats*? and that our Judiciary, except the County Courts, have become *so odious*, as that they must not only be *cashiered*, but during all future time put under the *ban of the empire*?

I don't think the people are yet mad enough, either to believe these things, or to concur in the result.

A number of honourable men of this body, (not so numerous it is true, as I expected and feared, considering the high respectability of the quarter, from which the proposition came) have thought, that it was a necessary part of the present scheme, to call Judges to render a daily account *on oath*, why they were not in court on such and such days, &c. Whether *such* a provision, in prospect of some future Judiciary, may be necessary, I know not. But if the conduct of the present Judges are supposed to deserve the implied censure contained in that proposition, it is no wonder they should be in the *odour* which it indicates. I have heretofore denied, so far as the court I belong to is concerned, the justice of any such charge; but if the proposed Constitution contemplates a Judiciary, which, in the opinion of honest men, requires such a clause as that, to carry its principles into practice, I can't think, until I see it, that the people will approve of it.

The course which this subject has taken here, is well calculated to make that branch of our Government, which has the least chance of defending itself against groundless clamour, *odious* to the people, and to destroy their confidence in, and respect for them; and what is the consequence?

Every Judge who will sit in the seat of justice under such a Constitution, will know and feel, that when he decides against a man, in any case in which his motives may be misconstrued, he does so at the hazard of being suspected of want of integrity. The party may have some right to think, and in the bitterness of his heart may say, that fellow *dared not* to do me justice. The fear for the security of his *reputation*, of his *feelings*, and even of his *bread* itself, has perverted the pure stream of justice. However just and pure the administration of justice may be, it is not considered as justice by him who has any cause to *suspect* its purity.

I am still more alarmed, when I hear it intimated here, that Judges, when they become *odious*, can no longer be *useful*, and therefore ought to be dismissed. This, too,

in the face of so many cases, well known to this body, in which *honest* and *honorable* Judges have for a time been odious.

In how many ways may not Judges become odious, and during the excitement of the moment, be irretrievably ruined, if they can be acted on by a body to whom they are made odious, if that body has it in its power to act during the heat of the moment!

Sometimes he offends the prominent members of the bar, as was the case of Judge Chase and others. So, too, if he opposes the Legislature in any favourite measure, by declaring a law *unconstitutional*; or he may offend the other party, by declaring it *constitutional*. Sometimes the Judges become so by a leaning, as is supposed, to *Federal usurpation*—and the day may come—I think I see its dawn—when they will become equally so, because they go too far for *State Rights*. Nay, I understood my friend from Chesterfield, who has borne honourable testimony in favour of the Judges, to insinuate, that perhaps on some occasions, we may have done wrong in *meddling with politics*.

I have had little to do on that subject, except in *Presidential elections*. It is true, I have had my finger in that *delicious pie* more than once—I have been a member of a Corresponding Committee in three cases, I think. In two of them, however, I was fortunate enough to be appointed by the *Legislative Caucus*.

In the last, by the Convention to form an Anti-Jackson ticket. In one of the former, that of Clay, Crawford & Co. I was against the whole set. They began the electioneering campaign too soon for my taste; but, in a choice of evils, I was for Crawford. In the late affair—or *affray*, if that is a better term, I might have been in the Convention itself; but, I informed my old friends in Rockbridge, who proposed to confer that honor on me, that I was again opposed to both, and would, even at that late day, do my best to oppose both, by offering some third man; that I was tired of a choice between evils; and though I had that choice, yet as I could see no great difference, in political principle, between the candidates, I wished Virginia to stand erect and firm in her principles, and to leave it to others to make that choice for us, if they would not come over to a *positive good*. Who I will be for next, must now depend much, as is perceived, on the opinion of the Legislature. I hope no man will consider me so *ineffably* stupid, as to risque my bread for such trifles as these.

I may have thought, that to elect one man would be a curse to the nation; but, I have a right to change that opinion. I may even *honestly* change it—and to begin my electioneering course in time, I think it not impossible, that I may be found on the side of the *Hero*; with liberty, however, to change my course on *proper occasion* and *due conviction*. I was for him, (with the exception of the case of the Governor of Georgia, and some other trifling matters) in his wars, although others, who honestly supported him as President, then thought he was little better than a heathen and murderer. My ancient regard for him is reviving; and if he once swims across the Tiber, with his batch of Editors round his neck, I may again rally in his ranks. If he can do that, he will be greater than Cæsar: he would have gone to the bottom with his armour on, but for his friend. If he redeems that *evil day*, and I trust he will do that, and much more good for his country, I may vote for him as a *positive good*. I wish no more choices between evils. Seriously, though, I am opposed to Judges being thrown into a situation in which they may be brought into a *particular odour*, by exercising the right of every *freeman*.

Hitherto, having nothing further to hope for from the Government, and having nothing to fear from the Government, except when they had an equal right to fear their God and their consciences, they have acted, I hope, as upright and independent men. If they are to become *odious* in these and a thousand other ways, and to be turned out as *consequently useless*, although they may be perfectly honest, I can only compare their situation to that of a witch in former days. The way she was to be tried, I have been told, was to throw her into a river. If she swam out, she was a witch, and was burnt; for, nothing but witchcraft could have saved her. If she went to the bottom, whether dragged there by the fiends who had laid a snare, and had tempted her to sell her conscience and soul, or because she was an honest woman, mattered not—she only went to her last home a few hours before her time.

As the Constitution before us now stands, the whole batch of Judges may be turned out by a majority of a quorum, by a repeal of the law; and under a similar law, re-enacted the next day, those of the *true faith* re-instated. Or, you may vote out a Judge, two-thirds of a quorum concurring, whether he is merely *odious only*, or whether some *high crime* is imputed to him—or you may turn him out, for the latter, by impeachment. It may be easier to *vote him out*, than to give him a *fair trial*; the responsibility for such an act is more decided. There are no Judges sworn in that case: they don't sit in the *judgment seat*, but in a tumultuary assembly, with this additional circumstance, that the accusing body becomes both Judge and Jury—the Bill of Rights, which says, that a man has a right to be *confronted with his accusers*, to the contrary notwithstanding.

If it be said, that this will compel an impeachment for an impeachable offence, I ask why put into our Constitution a clause opposed to that Bill of Rights, on which it is founded? Make a Judge *only impeachable* for crime, and give him a fair trial when and where you will.

If he is superannuated, or otherwise unable to discharge his duties, or shall be negligent or lazy in the discharge of them, which may arise from *habit*, not involving *moral turpitude*, or if (*on other days than the 4th of July*,) he has unfortunately contracted a habit, too frequently indulged in on that day—if he labours under a disease of this kind—one to which many an honest man is subject, without ever being conscious of it himself, so as in this way to unfit himself for his highly important duties—hear him, and if the accusation is well founded, turn him out by a vote.

Go beyond this, and you lay a snare for his conscience—you join the betrayer of the souls of men, and you are answerable for those souls who are thus *tempted and destroyed*. Under such temptation, let no man say, that he stands lest he fall.

How are we now to decide the *pending* questions of the officers, as to their claims for half pay, or such others as may probably come before us of that kind, involving the Treasury in very large sums? If we decide in favour of the State, may we not be suspected? If against, may we not become *odious*, and must we not risque the consequences?

May we not be tempted to do the latter, that we may avoid suspicion? Will you leave a dispute to your friend or dependant, and not recollect, that, if he is an honest man, he may bear against you on this very ground, and decide against you, unless you have a very clear case indeed?

I trust and hope, that the amendment will prevail.

Mr. Cabell moved the following amendment:

“But if no Judicial duties are assigned him by the Legislature, he shall receive no salary in virtue of said office.”

Mr. Randolph was opposed to the amendment of Mr. Cabell, and observed, that the House would perceive at a glance, the question might as well be taken on the amendment of Mr. Scott, as that of Mr. Cabell. That of Mr. Scott declared, that the Judge should not lose his office by the abolition of his court, unless that abolition took place by a vote of two-thirds of both Houses: that of Mr. Cabell went to nullify this provision. The sense of the House, therefore, would be declared on the latter when it was expressed on the former.

The question was then put on Mr. Scott's amendment, and decided by ayes and noes as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Marshall of Richmond, Nicholas, Clopton, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Prentiss, Branch, Townes, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—53.

Noes—Messrs. Barbour, (President,) Giles, Goode, Tyler, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Osborne, George, M'Millan, Campbell of Washington, Byars, Roane, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Tazewell, Loyall, Grigsby, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Pleasants, Thompson and Bayly—42.

Mr. Cabell then renewed his motion, and it was decided by ayes and noes as follows:

Ayes—Messrs. Barbour, (President,) Giles, Goode, Tyler, Anderson, Coffman, Harrison, Williamson, M'Coy, Moore, Beirne, Smith, Baxter, Osborne, Donaldson, George, M'Millan, Campbell of Washington, Byars, Roane, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Tazewell, Loyall, Grigsby, Campbell of Bedford, Claytor, Saunders, Cabell, Martin, Stuart, Pleasants, Thompson and Bayly—43.

Noes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Brodnax, Dromgoole, Alexander, Marshall of Richmond, Nicholas, Clopton, Baldwin, Johnson, Miller, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Stanard, Holladay, Mercer, Fitzhugh, Henderson, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Boyd, Pendleton, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Prentiss, Branch, Townes, Gordon, Massie, Bates, Neale, Rose, Coalter, Joynes, Upshur and Perrin—52.

No other amendment then being before the Convention, the question was propounded on engrossing the Constitution.

Messrs. Giles and Coalter said, they should vote in the affirmative, but reserved to themselves the right of voting as they thought best on the ultimate passage.

The vote on the engrossment was read as follows :

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Holladay, Henderson, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Martin, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—53.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Stanard, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Claytor, Saunders, Cabell and Stuart—42.

On Mr. Clopton's motion, an Engrossing Committee was appointed, (viz : Messrs. Clopton, Powell and Fitzhugh :) and to give time for engrossing the Constitution, adjourned till to-morrow 12 o'clock.

THURSDAY, JANUARY 14, 1830.

The Convention met at 11 o'clock, but the engrossing of the draught of the Constitution not having been completed, it adjourned to meet again at 2 o'clock.

It met again at 2, but the engrossing not having yet been completed, it adjourned to meet at 7 o'clock.

The Convention met at 7 o'clock. After some time, Mr. Clopton, from the Committee appointed to superintend the engrossing of the Constitution, entered the House and presented the engrossed copy to the President.

It was then read a third time from the Chair,

And the question being thereupon put, *Shall this Constitution pass ?*

Mr. Summers stated, that a member from one of the northwest districts, (Mr. Doddridge,) was so seriously indisposed as to be confined to his bed, and requested that the liberality and indulgence heretofore extended to members under like circumstances, should apply to the case of this gentleman, and that he might be permitted to record his vote at any time before the adjournment of the Convention, should his health so improve as to enable him to attend. Mr. S. said, that if the health of the sick member was not improved by the following morning, and it should be found that his vote would materially affect the question about to be taken, that the remaining delegation would, he understood, be prepared to give the people of that district their proper weight upon the very interesting proposition announced from the Chair.

Mr. Jones made a similar request in behalf of his colleague, (Mr. Giles,) whose infirm state of health would probably prevent his attendance after night in such damp weather.

The Chair said, that presuming from what had hitherto been done in similar cases, that such was the will of the Convention, he should give the permission unless it were objected to.

Mr. Randolph, after expressing his strong disposition to do all in the case which courtesy would require, said he was compelled by the stern dictates of duty to object to the granting of the leave desired. He thought the principle was fraught with the utmost danger. He put the case, that the adoption or rejection of the Constitution should depend on a single vote—or on two votes—and asked whether the Convention would permit two members, who had been absent during a considerable part of the discussions, to enter the House to-morrow, and by their votes to reverse the decisions that might be had to-night? He illustrated the principle by a further case of a bill in Congress being similarly situated, and asked if every one must not perceive the tampering to which such leave would open a door? He repeated his wish to be able to extend every courtesy toward the absent gentlemen, but concluded by expressing his conviction that it was his bounden duty to resist the request.

(As Mr. R. was speaking, Mr. Giles entered the House.)

Mr. Summers expressed his regret, that the indulgence which he had asked for a sick friend, should have met with opposition : he referred to the uniform practice of the Convention in according like permission, whenever it had been asked under circumstances like the present. He thought there was but slight ground to apprehend that the vote, about to be taken, would be affected by the one which may be hereafter

recorded; but suppose that to be the case, was the Convention prepared to send out a Constitution to the people which could only be passed by the absence of a sick member? The gentleman from Charlotte had heretofore reprobated an attempt to pass a Constitution by a lean majority of one or two, and therefore he had the less expected an opposition from him: if the coming in of the absent member should reverse the decision, it would only show that it ought never to have taken place. The objection, founded in the danger of the example, he thought was not entitled to serious weight. If it would leave a door to tampering, that door was already open; every member voting on the side of the majority might be tampered with, because any member so voting might move a re-consideration, and change his vote, and thus by possibility change the decision of the question.

Mr. Randolph said, that the permission heretofore granted, had had reference to intermediate votes, but this vote was final.

The question being put, the leave was granted without a count.

The question being again proposed, and on the passage of the Constitution,

Mr. Coalter, after referring to the difficulty he had had in making up his mind, expressed his final determination to be, that he should vote for the Constitution: he took it, if at all, as the least of two evils: he declared his decided preference for the mixed basis of representation, compounded of population and taxation, and his objection to the extension of the right of suffrage as being of dangerous tendency; but hoped that as he had not entered the Convention till the discussion on those points was principally over, he should be permitted to enter a full statement of his views in the volume which was preparing by the gentleman who took notes of the debate.

The President then rising, put to the Convention the final question, **SHALL THIS CONSTITUTION PASS?**

Mr. M'Coy asked for the ayes and noes, and the vote stood as follows:

Ayes—Messrs. Barbour, (President,) Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Goode, Marshall of Richmond, Tyler, Nicholas, Clopton, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Madison, Holladay, Henderson, Cooke, Roane, Taylor of Caroline, Morris, Garnett, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Tazewell, Loyall, Prentiss, Grigsby, Campbell of Bedford, Branch, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Coalter, Joynes, Bayly, Upshur and Perrin—55.

Noes—Messrs. Anderson, Coffman, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Stanard, Mercer, Fitzhugh, Osborne, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Summers, See, Morgan, Campbell of Brooke, Wilson, Claytor and Saunders—40.

So THE CONSTITUTION WAS AGREED TO, (by a majority of fifteen votes; which will be reduced to fourteen by the vote of Mr. Doddridge, if he shall be so far recovered as to be able to give it.)

The question was then put on the title, which was also agreed to, as follows:

"AN AMENDED CONSTITUTION, OR FORM OF GOVERNMENT FOR VIRGINIA."

A Committee of three was, on motion of Mr. Joynes, appointed to superintend the enrolment of the Constitution now adopted.

The Chair appointed Messrs. Joynes, Scott and Cooke as that Committee.

Mr. Powell moved that the enrolled Constitution be signed by the President, and countersigned by the Secretary.

Mr. Scott moved as an amendment that it be signed by the President, and *such other members as were disposed to sign the same*, and countersigned by the Secretary.

This amendment was carried, ayes 51, and the resolution as amended was agreed to.

Mr. Joynes moved the printing of ten thousand copies of the Constitution for the use of the members.

Mr. Upshur suggested some difficulty as to the transportation and distribution.

Mr. Joynes said, it would be but about one hundred copies apiece to the members.

Mr. Wilson, after objecting to thus spending the people's money, proposed that five copies should be presented to each member of the House of Delegates and Senate, which was agreed to, and the motion of Mr. Joynes was carried.

Mr. Cabell, believing that the vote which had passed as to the mode of authenticating the enrolled Constitution might place some gentlemen in delicate and unpleasant circumstances, moved a re-consideration of it.

This motion gave rise to a desultory debate, in which Messrs. Cabell, Henderson, Mason of Frederick, Claytor, Scott, Bayly, Coalter, Mercer, Stanard, Johnson and Nicholas took part.

It was urged on the one side, that the signatures of the members were unnecessary, to authenticate the instrument, those of the officers of the Convention being sufficient: that the course was unusual, having been pursued in only nine out of twenty-six Con-

stitutions agreed to in other States, and in those cases the members had been nearly unanimous in agreeing to the instrument so certified: that if some signed the instrument while others refused, it would be perpetuating on the face of a document, to be deposited in the archives, the disunion of that body: and that it would place those gentlemen who had voted against adopting the Constitution, in a very unpleasant situation, some of them being very unwilling to put their hands to an instrument as recommending it to the people, while they entirely disapproved of it as a whole.

It was contended on the other side, that as the caption of the instrument ran in the plural number, there was a propriety that it should have a plurality of signatures, and not be signed by a single man only: that no gentleman was committed by signing it, as the signature was merely a form of attestation to the instrument, as being that which the Convention had agreed upon: that it could occasion no misunderstanding of any one's views, as the vote was recorded by ayes and noes, and published to the world: and as to perpetuating the evidence of disunion in the archives, that would of necessity be done, and much more effectually too, by preserving in the archives, the Journals of the Convention, where all the discordant votes were on record: and that if granting the leave to sign might place some gentlemen in a delicate situation, withholding it would be a very harsh act toward such as were desirous of placing their signatures to the instrument.

(Mr. Mason of Frederick, after declaring that if it was the last act of his life, he would refuse his signature to such a paper, gave notice, that a *protest* would be drawn up, and the signatures invited of all who were opposed to the form of the new Constitution.)

Mr. Cabell said, that he had acted throughout, so help him Heaven, in good faith to the West: he had believed, and still did believe, that the white population alone was the true and proper basis of representation: but having been, as he esteemed it, fairly beaten, he was willing to confess it, and he trusted he should be permitted to march off the field retaining his side-arms, with flag flying, and he hoped, with all the honors of war.

Mr. Stanard wished to declare his explicit renunciation of the ground taken by the gentleman from Frederick, (Mr. Mason.) He objected to several provisions in the instrument, and thought that the allotment of power was, according to every test, less favorable to Eastern Virginia than justice required: but he would have given up that, and more, if he saw that it would be accepted by gentlemen from the West as an amicable compromise: but the ground on which he had rested his negative vote, was one provision, which alone would have been decisive with him, even if he had received a *carte blanche* to make all the rest as he pleased: he thought the Convention were doing what they had no right to do.

Mr. Johnson said, he had voted against this Constitution under a sense of imperative duty, but with a degree of reluctance which few were able to conceive.

Mr. Nicholas was glad of an opportunity of saying, that the vote he had given was dictated solely by a conviction that the public good required it at his hands.

The question on re-consideration was at length put and carried.

Mr. Claytor moved to amend the amendment of Mr. Scott, by striking out the clause relating to the attestation by the signatures of the members.

When, after some further conversation, on motion of Mr. Stanard, the resolution and amendments were laid upon the table.

Some accounts for expenses of fuel, transcribing, &c. were passed.

Mr. Mercer obtained leave of absence.

Mr. Cooke gave notice that he should to-morrow move the consideration of the propositions he had offered as to the mode of carrying the Constitution into effect. (He would willingly have waived them; but should he do so, they would be immediately moved again by another gentleman.)

The Convention then adjourned, (at near 10 o'clock.)

FRIDAY, JANUARY 15, 1830.

The Convention met at 11 o'clock, and was opened with the following appropriate prayer by the Rev. Mr. Croes of the Episcopal Church.

A form of prayer used on the last day of the session of the Convention, by the Rev. Robert B. Croes.

God, the Father of Heaven, have mercy upon us, miserable sinners.

O God, the Son, Redeemer of the world, have mercy upon us, miserable sinners.

O God, the Holy Ghost, proceeding from the Father and the Son, have mercy upon us, miserable sinners.

Thy property, O Lord, is always to have mercy ; to thee it appertaineth to forgive sins. Spare us, therefore, good Lord ; spare thy people, whom thou hast redeemed. Enter not into judgment with thy servants, who are vile earth and miserable sinners, but so turn thine anger from us who meekly acknowledge our vileness, and truly repent us of our faults ; and so make haste to help us in this world, that we may ever live with thee in the world to come, through the merits and intercession of our compassionate High Priest.

We thank thee, most Gracious Father, for the various mercies of Creation, Providence, Redemption and Sanctification, with which thou hast been pleased to bless us. We render thee the ascription of praise, that thou hast cast our lot in this land of justice and liberty ; that we are endowed with civil and religious principles, which no worthiness of our own could have obtained ; that we are permitted to sit under our vine and fig-trees, with none to make us afraid. But chiefly are we bound to glorify thy name for thine inestimable love in the redemption of the world by our Lord Jesus Christ, for the means of grace, and the hope of glory. Make, we beseech thee, all the people of this our favored country to be duly sensible of these distinguished blessings—and grant that they may show their gratitude to thee by cultivating that righteousness which exalteth a nation, and by abstaining from those sins which are a reproach to any people. To the members of this Convention, now assembled in thy presence, give the abundance of thy grace—that they may be especially thankful for thy goodness to *them*. May they call to remembrance, that while others have been afflicted by thy chastising hand, they, for the most part, have enjoyed the blessing of health. May they bear in mind, that by the King's reign, Princes decree justice, and that it is of *thy* mercy, that they have been permitted to proceed thus far in their labours, without a more serious interruption of harmony than they have yet experienced. Be with them, Almighty Father, at the close of their deliberations. May that spirit of charity now animate them, which beareth all things, believeth all things, hopeth all things, and endureth all things. Separating from one another with the most friendly feelings, do thou return them in safety and in health to their families and constituents ; and so direct and dispose their hearts, that they may use their best exertions to promote peace and unity and concord—to advance thy glory, the good of thy church, the safety, honour and welfare of thy people.

Finally, we pray thee, that all the nations of the earth may be made to cherish, and to stand fast in the liberty wherewith Christ hath made us free—and that the time may soon arrive when the comfortable Gospel of the Saviour shall be truly preached, truly received, and truly followed in all places, to the breaking down of the kingdom of sin, satan, and death—till at length the whole of thy dispersed sheep being gathered into one fold, shall become partakers of everlasting life, through the merits and death of Jesus Christ our Saviour.

The Grace of our Lord Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with us all, ever more ! *Amen.*

Mr. Joynes, from the Committee appointed to superintend the enrolment of the Constitution, entered the Convention about 12 o'clock, with that instrument in his hand, enroled on parchment of the largest size, and presented it to the Chair, accompanied with a certificate that it had been carefully compared with the engrossed copy and been found to be correct.

Mr. Randolph now rose and addressed the Convention in substance as follows :

Mr. President,—I feel embarrassed with regard to bringing forward the question, as to those to whom this Constitution shall be submitted for adoption or rejection. If I did not misunderstand the gentleman from Augusta, that gentleman conceded, that the Act of Assembly, by which this Convention—shall I say, was *gotten up*—was not a legal Act, having been passed without legal authority ; but he seemed to think, that the fact of its having been subsequently submitted to the freeholders of the Commonwealth, cured the defect of authority in those who passed it. Now, with all deference to that gentleman, let me be permitted to say, that the freeholders never gave any such assent as is supposed to be implied. The Legislature passed two Acts : the first was for determining the question, whether there should be any Convention at all. By that Act, the question was submitted to the freeholders ; and from the face of the returns, it appeared that there was a majority in favor of a Convention : Whereupon, the Legislature passed a second Act, convening that body ; but inserted in the Act a clause, leaving no option in the freeholders to reject, or to assent to the Constitution which should be proposed ; or to the provisions of that Act itself, even if they had been aware of all the provisions it contained : whereas I am as certain, as I can be of any thing, that they were not aware of those provisions at all. The freeholders first assent to the assembling of a Convention—the Legislature thereupon appoint the day when Delegates should be chosen—and, in the same Act, insert a clause, requiring the Constitution to be submitted to whomsoever the Convention might please to declare qualified for members of the House of Burgesses. When the election day arrived, the freeholders were obliged—*se defendendo*—or rather—*se defendendis*—to elect

Delegates to the Convention—or, as the other alternative, to allow a part only of the Commonwealth, to propose such Constitution, as to them might seem good. If the freeholders residing East of the Blue Ridge, had refused to elect Delegates, the Convention would have been attended exclusively by Delegates from the West of that Ridge—and then, what Constitution would have been presented to the Commonwealth, I cannot pretend to tell. On the other hand, if the freeholders West of the Ridge had refused to elect Delegates, then those East of the Ridge would have proposed a Constitution equally objectionable to the West. So that it is plain, that the fact of the freeholders having appointed their Delegates under the Act of Assembly, cannot, even by the most distant implication—unless it be the remotest implication that ever entered the mind of man—be considered as conveying any assent of theirs, that the new Constitution should be submitted for acceptance or rejection, to any persons but themselves. If *they* shall assent to this Constitution—if they shall choose to ratify it—well and good—there is an end of the matter—theirs is the power—though theirs will not be the glory. Sir, it is as plain as any proposition in Euclid—Sir, it is plainer—it is self-evident—that no other power on earth, save that from which this Convention derives all its authority to propose any Constitution at all, can rightfully pronounce on the validity of our acts, or decide upon the acceptance or rejection of such Constitution as we shall make.

Sir, I consider this as the greatest question which has been presented to this body, since it assembled. Much will depend on its decision—yes, Sir, very much will depend on it.

Is it not plain that the freeholders had no option but to elect delegates? But that does not in the slightest degree consecrate that provision in the act, which declares to whom the Constitution shall be submitted. Sir, though it is using strong terms, it would have been an act of treachery to their own principles, to permit the Constitution to be submitted to any others than freeholders for acceptance or rejection. Is it not obvious that if the Commonwealth consists of freeholders and non-freeholders—and the non-freeholders are—as we have been told they are—the most numerous of the two—that the worst of Constitutions—and God knows, I have nothing to say in favour of this one—might have been imposed upon the Commonwealth by those who—in the language of a gentleman on this floor—are “out of the Constitution”—against the voice of every freeholder in the country? Sir, what sort of a tribunal do you elect, when you admit those who have no lot or part in our acts—to pass judgment upon them? Sir, you might as well refer the Constitution to the people of Ohio—or the people of Kentucky—or—I will go farther—to the people of Japan. Yes, Sir—they have just as good a right to decide upon it.

Mr. President, I know the time is precious. I believe I have done justice so far as my poor capacity will allow—to the opinions I hold, and I will not longer detain you.

Mr. Coalter took the same ground—and contended that the act of the Assembly, calling a Convention, was an act of usurpation—which he had opposed at the time, and still considered as a revolutionary movement. He explained the grounds of necessity on which he had voted for delegates to the Convention, and contended, that as that body derived all its authority from freeholders, it had no right to go beyond them in submitting its acts.

While Mr. Randolph was engaged in reducing his intended motion to writing,

Mr. Mason of Frederick stated to the Convention, that when the question had been agitated, the evening previous, as to the proper mode of authenticating the instrument which had to-day been returned by the Committee on enrolment, finding it to be the sentiment of a majority that it was to receive the signatures of all the members who chose to sign it, he had been strongly impressed with the necessity of presenting the views held by himself and others opposed to the adoption of the new Constitution, in the shape of a protest: but finding afterwards that the resolution on that subject had been laid upon the table, and perceiving it to be the understanding that it was not again to be taken up, he considered that necessity as having ceased; and, therefore, no protest would be presented.

Mr. Randolph then moved the following resolution, on which he asked the ayes and noes:

“*Resolved*, That the amended Constitution adopted by this Convention, be submitted on the respective election days in the month of April next, to the persons qualified to vote under the existing Constitution, for members of the General Assembly.”

Mr. Thompson said he was constrained by an imperious sense of duty, to trespass (he hoped for the last time) upon the patience and attention of this Convention, for the purpose of expressing his most decided disapprobation of, and his objections to, the passage of the resolution just offered by the gentleman from Charlotte, (Mr. Randolph.) He regretted, that the gentleman had felt it his duty at this late hour to urge its consideration, because its adoption could not possibly accomplish any valuable purpose, but on the contrary might, and he verily believed, would produce excitement, heart-burnings, and dissatisfaction, with that part of the community, the non-free-

holders, whom your new Constitution invests with the elective franchise—*Cui bono?* will you do this. Can those who are friendly to the new Constitution, and really desire its ratification by the people, expect to accomplish their wishes by the adoption of this resolution, the necessary effect of which will be, gratuitously to insult and exasperate that portion of your fellow-citizens. Reject this resolution, and permit them to have a voice in the decision of this question, and they will be the fast friends of this new charter. Adopt it and you make them its enemies and create an excitement in the country to be deprecated by all; an excitement that will not be confined to them, but which will prevail with the freeholder, in common with the non-freeholder. For, permit me to tell gentlemen, who deem the freeholders indifferent on this subject, that they do them the most flagrant injustice. It should be recollected that this Convention was called by the freeholders, and an object not the least prominent, was that of enfranchising their disfranchised brethren.

Mr. T. said, this new Constitution was no very great favourite with him. He had voted for it, it was true, but with the most unfeigned reluctance—he had done so in the spirit of conciliation and compromise. It had been his misfortune to represent on this floor a divided people, a people entertaining conflicting views and opinions on the great and delicate questions involved in our recent deliberations—and he had felt it his duty thus circumstanced, to consult in some measure, the wishes, the hopes, and the fears of both sides—to yield somewhat to the unforeseen circumstances of the occasion, and to offer up some of his own individual convictions of political right and political justice, upon the altar of the public peace: for these reasons only, had he recorded his vote in favour of the passage of the Constitution: that he did so with *extreme reluctance*, was not because he considered the new devoid of all recommendation; far from it; (he would frankly confess, that he considered it a valuable improvement upon the old, containing many valuable features of reform;) but because representation had not been based at the present and in all future time upon free white population, the only true basis; because the election of Governor was not referred to the people; because an Executive Council was retained, the Right of Suffrage not sufficiently extended, and the County Court system in its organization and powers left unreformed. A hard necessity, however, had compelled him to give his assent to this new charter, notwithstanding these great objections; and whenever as one of the people he should be brought to choose between the new and the old, he should not hesitate to give to the new his decided preference and support. When he voted for it, he had done so in good faith: he should vote for it at the polls, and should recommend it to the adoption of his constituents. But, said Mr. T., notwithstanding this avowal, and as anxious as he was that this day should terminate our labours in peace, harmony, and mutual good feeling, *he would say*, that should that resolution be adopted, he should esteem it his duty to move a re-consideration of the vote adopting the amended Constitution—and would, if sustained in this motion, vote against its adoption, preferring to submit no Constitution at all, to submitting any, in a manner as he believed, so violative of the natural, inherent, and original rights of man, as that proposed by the resolution under consideration. He contended, that according to the theory and principles of free government and the equal rights of man, the question of ratification or rejection should be submitted to the whole community—freeholder and non-freeholder, whether entitled or not to the Right of Suffrage under the Constitution submitted, or the existing one. This, he said, had been the invariable practice of every State in the Union, that had submitted an original or amended Constitution. It was the only way in which a government could regularly and rightfully be called into existence. It is then the act of a majority, all having been consulted—and if a majority exclude a part from Suffrage, they have the unquestionable right to do so. From their decision there is no appeal. Then, and then only is decided rightfully the question, whether it is expedient to surrender this great natural right. Then is there less cause of complaint against its abridgment. Then might the plea of expediency be urged with plausibility and effect to sustain the decree of the majority, in which resides the rightful sovereignty in all free governments. All the gentlemen who have advocated a restricted Suffrage on this floor, have founded the right to exclude upon the ground of expediency, and not that one man by nature has more right than another; but the difference between us is, that they make the minority the judges of the expediency of retaining power in their own hands. I claim for the majority the right to decide this question. The same principle that would sanction the right of less than a majority to decide this question of expediency, would justify monarchy, oligarchy, aristocracy, despotism. If the freeholders, without consulting the non-freeholders, arrogate to themselves the exclusive right to govern this land, whether they be a majority or not, why may not a part of them with equal propriety assume that right in exclusion of the rest? why may not the large landed proprietors deposing the petty freeholders, say, that they alone are the rightful sovereigns?

The act to organize a Convention, has been made the subject of allusion and construction on several occasions in this Convention, and by the gentleman from Char-

lotte, (Mr. Randolph,) the subject of complaint and severe animadversion. He has been pleased to term the whole act, but more especially that part of it that has immediate reference to this subject, an usurpation on the part of the Legislature that enacted it. The 19th section of this act provides, that the amended Constitution shall be submitted for ratification or rejection, to all such persons, as shall, by the amended Constitution, be authorised to vote for members of the Legislature, or by this Convention shall be authorised to vote on the question of its ratification or rejection. I give the substance and not the words of the act. The whole object of this provision was to declare, what it was supererogatory to affirm, that if it should be the pleasure of this body to designate the persons to whom our work should be submitted, we had the power to do so, and that in the event of our silence on this subject, the sheriffs should, on the question of ratification or rejection, take the votes of all qualified under the amended Constitution. The history of this provision of the law in its progress and passage through the Legislature, induced Mr. T. to believe, that it was intended as an indication of that body to this, of its sense of the propriety of extending Suffrage on the question of ratification to the whole community, rather than to restrict it to freeholders as we are asked to do by the resolution of the gentleman from Charlotte, (Mr. Randolph.) In the Legislature it was contended on the one hand, that all should be allowed to vote on this question—on the other, that only the freeholders should vote. The adoption of the provision referred to, taken in connection with the almost universal opinion prevailing in the Legislature, that Suffrage would be extended by the Convention, repudiates entirely the claim of those who contended for a freehold submission. Mr. T. believed, the real object of the provision, was an extended submission of the question, though by its terms, the right to diminish or to enlarge it might equally be inferred.

This was the usurpation of which the gentleman complained, that the Legislature had not confined the submission to the freeholders. If it were an usurpation—against whom and by whom was it committed? Against the freeholders by the freeholders themselves—for, what they did by their agents, the members of the Legislature, they did by themselves—and this usurpation thus committed by themselves against themselves, these same freeholders ratified, first, by their acquiescence, and secondly, by the act of electing members to this Convention, and all this, so far as I have heard, without a murmur or complaint against this act or any part of it. The gentleman from Charlotte, (Mr. Randolph,) will surely not complain of the fiction by which I make the law of the last session the act of the freeholders—when he and his associates have so frequently contended on this floor, that the act of the Legislature in the election of a Governor or other officer, would be substantially an election by the people, being their act performed by their agents. No one ever supposed, that the acts to take *the sense of the people and to organize a Convention*, were acts of ordinary legislation, or properly speaking, acts of legislation at all, as little so as an election by that body of any officer. No one ever supposed, that the old Constitution either expressly or impliedly gave such a power—for it must be recollected, the old Constitution contained no provision for its own amendment, and to expect that it could, strictly speaking, be changed *according to law*, would be to suppose an absurdity. The acts spoken of, were called for by their constituents, resulted from the *necessity* of the case, and were justified by that supreme and paramount law, the *salus populi*. In short, they supplied the only mode, by which the original right of the people to meet in full and free Convention to reform, alter, or abolish their form of government, could be exercised, without jeopardizing the peace, tranquillity, and harmony of the State. The gentleman has himself stated over and over again, that the people could not exercise this right in *propria persona*, and independently of the existing government—and that an attempt to call a Convention, without Legislative facilities, would be flagitious. The gentleman's various arguments taken together, prove too much: that is—that although the right of the people to call a Convention is conceded by all, yet the practical exercise of this right is usurpation or crime, for that is the sum and substance of his arguments. In one breath with the gentleman, the Legislature is very trust-worthy—and their acts are to be deemed the acts of their constituents—but when those acts incur his disapprobation, and are not entirely to his taste, they are acts of usurpation.

The truth is, the action of the ordinary Legislature on this subject, as before remarked, is not of the character of ordinary legislation. It is, in the nature of a resolve or ordinance, adopted by the agents of the people, not in their Legislative character, for the purpose of collecting and ascertaining the public will, both as to the call and organization of a Convention, and upon the ratification or rejection of the work of that Convention. If the substance of the thing, to wit: the ascertainment of the public will, is accomplished, it is needless to stickle about forms. For this purpose only is the aid of the old government, its officers, and instruments invoked, to perform the office of a scaffolding on which to stand, whilst you are erecting the new. Thus has this matter been viewed in other States similarly circumstanced as ourselves;

and in their Legislative action on the subject of a Convention, they have adopted the language of resolve, recommendation, and advice, instead of the technical and imperative language of enactment: I allude particularly to the example of Pennsylvania. Mr. T. concluded by saying, he should extremely regret the passage of the resolution. Let us not add another to the many causes of excitement already produced by our proceedings. Having agreed with so much difficulty upon a Constitution, let us, *at least*, submit it to those, who are declared by it, worthy of the Right of Suffrage.

Mr. Henderson said, that he did not rise to take any part in the discussion. He had, indeed, a strong opinion on the subject; but he should not attempt to state the grounds on which it rested, or to support it by argument. He had once before taken the advice of the venerable gentleman at the head of the Judiciary Committee, and he would now repeat the liberty of asking him to favour the Convention with his opinion: it would shed light upon the body, and might tend to still the rising tempest.

Mr. Mason of Southampton said, that he had been a member of the Senate, which gave its assent to the act in question. He trusted he should be the last to be guilty of any act of treachery to the freeholders of the Commonwealth: he had always maintained that freeholders alone had a right to elect members of the Convention, and afterwards to pass upon its acts. In that sentiment he agreed entirely with the gentleman from Charlotte. It would be recollected that the bill finally passed, was a substitute for another bill from the House. He had regretted to find in nearly half the Senate, a feeling similar to that now manifested by the gentleman from Amherst; and that they were disposed to take the Government out of the hands of the freeholders. The task of the friends of the freeholders had been a very delicate one, yet they finally succeeded in establishing the principle they wished. He believed most religiously that a majority had been, and still were, opposed to the call of a Convention; nevertheless, his duty as a public functionary required of him to give effect to the bill. The law fixed the time and the mode in which members of the Convention were to be elected; but the Legislature did not stop there: they knew that the acts of the Convention would be inchoate and *in fieri*, until they were ratified. What then, had the Legislature to do? The public officers were bound by acts of the Assembly, under penalties that might be recovered, and he felt bound to say, that the officers should act under such penalties as the Assembly might require, and he had accordingly voted that the sheriffs, whenever the proceedings of the Convention should have been published, should take the sense of the people thereon. The Legislature never had intended to prescribe who should vote on that: they had never dreamed of any such meaning as was now contended for the act; an interpretation, which virtually gave to the act of the Convention the force of law. The sheriffs were directed to take the sense of the people, by which was understood the sense of the voters or of such other persons as the Convention might designate. If the Convention should adjourn without saying who were to vote upon the final question, then the provisions of the act were simply a declaration that the voters should decide. After that explanation, he hoped that none would impute to the Legislature any act of usurpation. He did not believe that the people ever ratified the law. They had, indeed, elected members under it, but that was purely in self-defence. Mr. M. said, he would address one consideration to the good sense of the gentleman from Frederick, (Mr. Cooke.) The Assembly had prescribed one mode for carrying the new Constitution into effect; that gentleman now proposed a different mode. But, if the people had ratified the act as was contended by that gentleman, whence did the Convention derive its authority? But this was an argument for that gentleman alone. For himself, he did not believe that the people ever had ratified the act, and after all, the whole purpose of the act itself, was to devolve a duty on the sheriffs and to compel them to perform it. Mr. M. concluded by saying, that he had only risen for the purpose of withdrawing himself from the strong terms of censure, used by the gentleman from Charlotte, in reference to the act, and to those who passed it.

Mr. Randolph rose in reply. I can assure the most worthy and highly respectable gentleman from Southampton, that nothing was farther from my intention than to impute to him any wrong in word, thought or deed. Sir, my language was altogether hypothetical. I insisted, that if that which was contended for were true, then the Legislature had been guilty of treachery—and nothing is more true.

As to the gentleman from Amherst, I can only say that I could not understand him. The gentleman imputes it as a fault to me, that whereas the Governor of Virginia has always heretofore been elected by the people, I am willing to continue that mode of election, because I believe that the opinions of the General Assembly are usually a fair expression of the sentiments of the people. But, what analogy is there between such a belief and the opinions that the General Assembly have a right to alter the Constitution in one jot or tittle? Sir, I am not such a mad-man—such a moon-struck maniac—as to attempt to butt against the united force of the whole people of Virginia, backed by the General Assembly. All I contend for is, that if the act is to be

so construed—and I acknowledge myself a poor hand at construction—though I think I have seen courts that were little better—then the act was a gross act of treachery to those whose trustees they were.

No gentleman who hears me, will deny that the provision, with respect to the Right of Suffrage, is among the most important parts of the Constitution. Now, with regard to all the other parts of it, the action of this House is held to be advisory and initiatory only. On every other subject, we are merely advisers; but, if the construction of the act be good, which is here contended for, we are not, as it respects this particular thing, advisers at all. We do not advise—we decree. Is it possible there can be any so obtuse as not to perceive the distinction? *Decrevimus*—we have decreed. Sir, if we have the power to decree with respect to the Right of Suffrage—why not with respect to the apportionment of representation? I would thank any gentleman to take me out of that difficulty—or himself rather. I ask again, if we may decree with respect to this question, why not with respect to all questions? Sir, the right cannot be denied.

As to being actuated by any wish for the adoption or the rejection of the Constitution, if this were a mere question of expediency, it might be so; but, he knows little of me, who thinks that in a question of vital principle, I can be so actuated. Sir, it is a principle as clear to me as any in mathematics, that the whole authority in this body has emanated from the people. The Assembly took on themselves—in a case, I grant, of extreme necessity—what they had not a right to do. I grant that this act was afterwards cured by the act of the freeholders—that is, supposing they approved it—it was so far cured—not entirely. But, the second Act of Assembly has not been ratified at all—the freeholders have never passed upon it in any shape. If my resolution shall be adopted, they will have to do so—nay, if a majority of the voters—pot-boilers and all—shall have approved or rejected the Constitution, then that Act of the Assembly will have been ratified—but not till then. It is still *sub judice*. Sir, I am wasting time—I am burning day-light—to argue the question, whether this House can act definitively on any one subject.

In regard to the threats of the gentleman, that he will move a re-consideration, they have no effect on me whatever. I am perfectly impassive to any such threat. I have not the least objection in the world that he should make that motion this moment.

Mr. Johnson now rose to give a brief explanation of his views on this subject. After quoting the Act at large, he stated his understanding of its meaning to be, that in case the Convention should make no other provision, the sheriffs were to take the votes of all such persons as the Convention should declare duly qualified to vote for members of the House of Delegates; but, that if the Convention should not approve of that arrangement, it was for them to prescribe to whom the Constitution should be submitted. The proposition of the gentleman from Charlotte was not decided upon by the act, and it was still competent to the Convention to say, that the Constitution should be submitted to freeholders only, if so they thought best; otherwise, they might say nothing at all on the subject, and leave the matter where the act had placed it. This was his understanding of the meaning of the act. As to its authority, he had already admitted, and he now repeated the admission, that the General Assembly had no legitimate power to pass such an act. The only power the Assembly could possess must be received from its constituents, and must either be previously given, or implied in their subsequent ratification. How, then, stood the question? By the first act, the question was to be submitted to the freeholders, whether they desired a Convention or not. The question was put accordingly, and what was to be regarded as a majority of the freeholders, declared that a Convention should be held. But how? As the people might prescribe? As the people themselves should determine in their parishes, in the election districts, at their court-houses, and their muster-fields? No. It was the intention of the people, that the expression of the public will should be given by the Legislature, as well with respect to the manner in which the Convention was to proceed, as to the purposes for which it was to be holden. Here, then, was the authority of the constituent body. Here was the voice of the principals to whom the Legislature were but agents. Acting under that authority, they declared the manner and purpose of the Convention; but, that declaration was not obligatory—it had no sanction—it did not bind the freeholders to send Delegates. If it contained any thing which the freeholders did not approve, they might have arrested the proceeding. They had the same authority to give counter instructions, as they had to give original instructions. They could have gone to the polls again, and commanded their Delegates to repeal the act. But as the case was, the Delegates, if they acted at all in the matter, had plainly to prescribe the objects of the Convention, and how they were to be attained. The whole subject had been referred to them—there was no other way to do it—and the only remedy was to arrest the matter *in fieri*. That was the only safe, the only proper and wise remedy, which they could retain in their hands. Such being the case, what had been done? The act, when presented to the freeholders, had been acquiesced in by the election of members every

where without complaint or remonstrance. Was there any other mode in which the people could express their approbation? If there was, then the act was still unratified, and the members were assembled there by the Legislature alone. What were they doing? They were proceeding solemnly to sign, seal and deliver to the people the plan of a new Constitution; and yet would they say that this was done without authority? That it was all void? It could not be. And if the act had been accepted by the people, he begged gentlemen to tell him what part of it had been accepted, and what part rejected? What was their authority, and what was not their authority? From that act they derived their powers, and if any, then all that it contained.

It had been said, that the Convention was acting definitively on the subject of the Right of Suffrage, without consulting their constituents. This was true—and why? Their constituents had authorised them so to do. Would it be contended, that their constituents had no such authority? That they could not give such power to their agents beforehand? Was the principal necessarily bound to retain the right of ratifying the acts of his agent? He had never understood so. It might have been unwise in them to do so; but, that was a question for the constituent body alone. If they chose to do so, why might they not? Suppose the Constitution which they had now made should be rejected by the people—had they no Government under them? Would they have no Constitution? He was sure the gentleman from Charlotte would not say so. [Mr. R. That I won't.] How came *that* Constitution to be the supreme law of the land? Had *it* ever been submitted to the constituent body for their ratification? Had they ever voted on it at the polls? How else had the people expressed their assent to it, than by the election of Delegates under it, and by a tacit acquiescence. The authority of those who framed it was a general grant of power to provide for the exigencies of the times—to adopt a form of Government for the Commonwealth. He did not believe they had usurped any authority. There had been a great political emergency. That form of Government had been provided, and the people exercised their pleasure respecting it. They gave no other vote but the substantial act of using it as their shield, and adopting it as their own. Mr. J. concluded that there could be no doubt of the right of the original body to give such authority as the act contained—they had given it—and under that authority, it was at the discretion of the Convention to submit the new Constitution to whom they would. He would submit one consideration which was entitled to respect from every one who was not a friend of revolutionary scenes—that it was of the last importance, to do all in their power to save the necessity of resort to original Assemblies of the people, and in place of this, to facilitate, as much as possible, the use of legislative acts under the people's sanction. But, how could this be done, if the Convention should pay no respect to the very act under which they were assembled; but, claiming to be the people acting by their representatives, to set aside its provisions, and adopt others in their place? He thought it was becoming in them to show all respect to an Act of the Assembly, which the people themselves had sanctioned.

On the question of expediency he had little to say, and he felt but little concerned. As one of the minority, he could not be expected to feel an overweening zeal for the adoption of this Constitution. He regretted much that it had proved to be a Constitution for which he could not feel some, yea, a deep interest. He should vote on the present question in conformity with what he believed to be just and sound principles, and not as looking to the consequences of his vote upon either the adoption or rejection of the Constitution. He thought it right to submit the final question to the qualified voters of the Commonwealth. The Convention declared them (he did not) the proper depositories of the sovereignty of the country; the fit associates of all who exercise that sovereignty now, and he trusted that none who had declared this, would consider these same persons, unfit to be consulted on the question, whether the Constitution settled them or no. They who are to be the sovereigns of the land, were certainly the persons to answer such a question. The freeholders had said so, and the Convention, as their representatives, ought to say so too.

Mr. Randolph replied. There is much ingenuity in the argument of the learned gentleman from Augusta: notwithstanding—it happens to the argument of that gentleman as it often does to the arguments of men fully his equals—it has no substantial force. So far as my opinion is concerned, the gentleman might have spared himself the trouble of a demonstration, that it was competent to the freeholders to have invested this body—if so it had seemed good to them—with absolute power to dictate a Constitution like Solon or Lycurgus (great men whom we should then have resembled in one respect at least.) But I put it to the gentleman from Augusta, whether there was a single man in the Commonwealth, who did believe, when he voted for members to this body, that whereas our powers on all other points were to be the powers of advisers only, on this point alone, were we to be absolute.

If the freeholders chose to invest men with power to make a Constitution over which they were themselves to have no control, that is one question: but can the legal sub-

tleties of the learned gentleman bear him out in the earnest belief, that the freeholders ever intended to invest us with plenary powers on this one point and not on any of the rest? That it ever entered the head of a freeholder in the State, when he went to the polls, to give us absolute power in any thing? Sir, there is not such an honest man in the State. None who ever proposed a Convention, ever thought of giving its members a power of attorney to make a Constitution absolute, in the one respect, and advisory in every other. Sir, it is a monster unknown. The people have been foolish enough in all ages to give up their liberty, but they have never consented to give up one half of their liberty, while they insisted on retaining the rest. The people of Virginia did no such thing. They empowered this Convention as advisers only, and if under the quirk—I must be permitted to use the term—if under this quirk, the people shall be entrapped as to one of the greatest branches of power, any honest Chancellor would be entitled to give them redress.

Sir, I am afraid that I am very unfit for the task I have undertaken, but nothing is more clear to me, than that the attempt of the gentleman from Augusta, is an illusion—it is a deception:—not that it is so meant—but the gentleman's own ingenuity has led him astray—I would put the question to any man—yes, Sir, to any woman—in the Commonwealth, and the decision of all would be the same.

Mr. Nicholas observed, that it might well have been anticipated, that the question, to whom the ratification or rejection of the Constitution was to be submitted, would prove one of great interest and importance. He had reflected on it, and endeavoured to ascertain what course he ought to pursue in its decision. The result of this enquiry was, that the subject should be referred to the persons authorised to vote under the existing Constitution. It appeared to him that there are two modes in which a Government can be changed. The one, where the people being oppressed, resort to the original and inherent right to resist despotic powers, and to carve out their own redress, by overturning the existing establishment. This is revolution, in the plain and simple meaning of that term. The other is, where the community agrees to modify its existing institutions, with the consent of the actual Government. This is the course which has been pursued in the present instance. Application was made to the Legislature to submit the question of Convention to the public decision. They submitted it to the freeholders, from whom they derived their power, and to whom alone they had a right to make the appeal. By this act, they recognized, and admitted the principle, that in this mode of changing a Government, the only persons who had the right to decide, were those who were the depositories of the powers of the present Government. If the principle be correct, it would seem to follow as an inevitable consequence, that the assent of the freeholders ought to be obtained to the amended Constitution to give it validity. Every reason which could be urged, for referring the question of calling a Convention to the freeholders, applies with equal force to shew, that the ratification or rejection should also be submitted to them. But, it is contended, that the freeholders have assented to a reference of this question to others than themselves. The law submitting the question to the freeholders, only required them to say “Convention or No Convention.”

Their decision in favour of a Convention, did not waive their right to pronounce on the form of government, which might be tendered for their acceptance, nor amount to a sanction of all the provisions which might be incorporated into an act calling the Convention. Nor is the argument valid, which attempts to shew that sending delegates to the Convention implied an assent to all the provisions of the law, where those provisions exceed the power given the Legislature, which was simply to call a Convention. This has been satisfactorily shewn by the gentleman from Charlotte, (Mr. Randolph.) The freeholders in one section, knowing that those in another would send deputies, were placed in a situation, where they were compelled to do the same, or suffer a Constitution to be got up, by one-half of the State to the exclusion of the other. And though the authority of such a Constitution might be well questioned, yet the conflict about it, might have convulsed the State. The argument that the people might have remonstrated against the terms of the law, is not sufficient to shew, that the Legislature did not transcend their powers, in referring the subject to voters other than freeholders.

The omission to remonstrate in this way, does not prove that the Legislature acted within the sphere of their legitimate power; or otherwise, every tyrannical, or unconstitutional act, where the people do not remonstrate, may be proved to be wise and constitutional.

Besides, the people had no opportunity to interfere; the law of the last Assembly was to go into effect, before another meeting of that body was to take place. It appears to me, then, that the freeholders have done no act to exclude their right to be heard on this subject. If it be admitted, that the change in the government can only be made, with the assent of those who possess the power, the reference of the question to those not now entitled to vote, would present a curious political anomaly. In the first place, on a question whether the Constitution is to be adopted, we are to an-

ticipate, that it will be so adopted, and give the decision to those who are to possess no political power until after the event takes place. Instead of obtaining the assent of those in whose hands the power of government is, we are to unite in the decision of numerous classes, who constitute no part of the actual government.

In doing this, we not only depart from the principles I have endeavoured to enforce, but adopt their very opposites, as rules of action. Suppose all the freeholders, or a majority were to decide one way; and a greater number of other, and new voters the other. The decision would then be made, not with the assent of the existing authorities of the country, but against it. I do not feel at liberty to enquire into the effect which the decision of this question will have on the rejection, or adoption of the new Constitution. Ideas of expediency, are not those which ought to govern my vote.

I must leave the fate of the Constitution to be decided by my constituents. All we can do, is to adopt the best we can get, and let those who sent us here, decide whether their happiness will be promoted by what is offered to them. In their decision, I shall acquiesce with pleasure. But in determining the great and interesting question under discussion, I must, as an honest man, and a faithful representative, give my vote as my conscience directs, regardless of consequences. I am here the representative of the freeholders. I do believe, that they have the right to decide this question, both on principle, and on a just construction of the various Legislative acts, and the proceedings which have taken place under them, and I cannot consent to be instrumental in depriving my constituents of that right.

Mr. Stuart wished to make a single remark as to the question of power, not of expediency. The gentleman from Charlotte had said that the people had not done so foolish a thing as to say, that the Convention might make a Constitution without submitting it to them. But where did they say so? only in the act of their representatives. That was the only expression of their will, and that act, while it restrained the powers of the Convention in one respect, extended them in another, and it was certainly as valid in extending as in restraining.

Mr. Moore asked that the question should be taken by ayes and noes. It was so taken accordingly, and decided as follows:

Ayes—Messrs. Jones, Leigh of Chesterfield, Taylor of Chesterfield, Giles, Brodnax, Dromgoole, Alexander, Nicholas, Mason of Southampton, Trezvant, Claiborne, Urquhart, Randolph, Leigh of Halifax, Logan, Venable, Holladay, Roane, Morris, Garnett, Tazewell, Loyall, Prentiss, Grigsby, Branch, Coalter, Upshur and Perrin—28.

Noes—Messrs. Barbour, (President,) Goode, Marshall of Richmond, Tyler, Clop-ton, Anderson, Coffinan, Harrison, Williamson, Baldwin, Johnson, M'Coy, Moore, Beirne, Smith, Miller, Baxter, Madison, Stanard, Fitzhugh, Henderson, Osborne, Cooke, Powell, Griggs, Mason of Frederick, Naylor, Donaldson, Boyd, Pendleton, George, M'Millan, Campbell of Washington, Byars, Taylor of Caroline, Cloyd, Chapman, Mathews, Oglesby, Duncan, Laidley, Sumners, See, Morgan, Campbell of Brooke, Wilson, Barbour of Culpeper, Scott, Green, Marshall of Fauquier, Campbell of Bedford, Claytor, Saunders, Townes, Cabell, Martin, Stuart, Pleasants, Gordon, Thompson, Massie, Bates, Neale, Rose, Joynes and Bayly—66.

So the resolution of Mr. Randolph was rejected.

Mr. Cooke now moved the consideration of so much of his propositions as had not been superseded, as follows:

"I. It shall be the duty of the Executive Department of the existing Government, so soon as all the returns required by the twentieth section of the Act of the General Assembly, entitled, "An Act to organize a Convention," shall have been made, if it shall appear that a majority of all the votes given is for ratifying this amended Constitution, forthwith to make proclamation of the fact.

"II. And it shall moreover be the duty of the Executive Department, in and by such proclamation, to command the sheriffs and other officers, directed by law to hold and superintend elections, under the penalty of dollars for failing to obey such command, to open polls in their respective counties, cities, towns and boroughs, and in the election districts established by law in their respective counties, on the , for the election of a Delegate or Delegates, as the case may be, to represent the counties, towns, boroughs and districts, respectively mentioned and described in the third article of this Constitution, and of a Senator to represent each of the Senatorial districts described in the fourth article.

"III. So soon as the said election of Delegates and Senators shall have been made, the previously existing Senate and House of Delegates, elected under the old Constitution, shall cease to have legal and constitutional existence.

"IV. Should any of the contingencies herein before mentioned, render it necessary or proper to convene a General Assembly, after such election shall have been made, and before the time herein after appointed for the first regular annual meeting of the General Assembly under this amended Constitution, the new General Assembly shall be convened by the Executive Department holding its power and authority under the old Constitution.

"V. The first regular General Assembly under this amended Constitution, shall convene and assemble at the Capitol, in the City of Richmond, on the

He briefly recapitulated the argument he had before urged in support of his plan.

He moved to fill the first blank with "\$5,000;" the second blank with "the first day of November term, in the year 1830;" and the third blank with "first Monday in January, 1831:" which amendments were agreed to.

Mr. Leigh then moved a substitute for the entire proposition submitted by Mr. Cooke. He supported the amendment, by referring to the argument of Mr. Stanard of yesterday, which went to shew the necessity of some test of voters, to be a guide for the sheriffs at the polls.

Mr. Stanard proposed the following orders:

"Ordered, That the roll containing the draught of the amended Constitution adopted by this Convention, and by it submitted to the people of this Commonwealth, for their ratification or rejection, be enclosed by the Secretary in a case proper for its preservation, and deposited among the archives of the Council of State.

"Ordered, That the Secretary do cause the Journal of the Proceedings of this Convention to be entered in a well-bound book; and after the same shall have been signed by the President and attested by the Secretary, that he deposit the same, together with all the original documents in the possession of the Convention, and connected with its Proceedings, among the archives of the Council of State; and further, that he cause ten printed copies of the said Journal to be well bound, and deposited in the public Library."

Mr. Leigh approved of the orders.

Mr. Cooke also, of the first two; and it was agreed the test question should be put on the last.

Mr. Leigh modified his amendment, combining it with Mr. Stanard's third order, so as to read as follows:

"Ordered, That the President of the Convention do certify a true copy of the amended Constitution to the General Assembly now in session; and that the General Assembly be, and they are hereby requested to make any additional provisions by law, which may be necessary and proper for submitting the same to the voters thereby qualified to vote for members of the General Assembly, at the next April elections, and for organizing the Government under the amended Constitution, in case it shall be approved and ratified by such voters."

Mr. Johnson expressed his preference of Mr. Leigh's amendment over that of Mr. Cooke, but could not wholly approve either. He denied the right of the existing Legislature to act in the case, and the right of the Convention to invite them to do an unauthorised act. If the act had provided no means for carrying the Constitution into effect, he should not have denied that the Convention would have had the incidental right to make provision for that end; but, as the act had itself provided, that part of the subject was taken out of their hands.

Mr. Johnson then moved an amendment to the amendment of Mr. Leigh, by striking out from the word "the," in the second line of the third order, to the end thereof, and inserting the following:

"Executive of this Commonwealth, with a request that it be published, in order to be submitted to the people, for ratification or rejection, at the April elections in the present year, pursuant to the provisions of the nineteenth section of the Act of the General Assembly, entitled, "An Act to organize a Convention," passed the 10th of February, 1829."

Both Messrs. Leigh and Johnson defended their own amendments by an eloquent speech.

Mr. Johnson's amendment was rejected.

Mr. Cooke moved a division of the question, so that the vote be first taken upon the third order contained in Mr. Leigh's proposed substitute; which was agreed to by the House.

And the question being put accordingly, was determined in the affirmative—Ayes 51, Noes 43.

The question then recurred upon agreeing to the two first orders contained in Mr. Leigh's proposed substitute, and was determined in the affirmative.

On motion of Mr. Leigh of Chesterfield, *Resolved*, That the President do now sign the enrolled amended Constitution, adopted by this Convention, and that the Secretary do attest the same; which was done accordingly.

The President then retired, having called Mr. Stanard to the Chair.

On motion of Mr. Stuart, the following resolutions were agreed to:

Resolved, That the President of this Convention tender to the Pastor and Trustees of the First Baptist Church the thanks of this Convention for the use of their Church.

Resolved, That the President of this Convention tender to the Clergy of this City the thanks of the Convention for the promptness and punctuality with which they have complied with the request of the Convention, in opening its daily sessions by prayer.

Mr. Randolph then rose and addressed the Convention nearly as follows :

Mr. Chairman,—For the last time, I throw myself upon the indulgence and courtesy of this body. I have a proposition to submit, which I flatter myself—which I trust—I believe, will be received not only with greater unanimity than any other which has been offered in the course of our past discussions, but with perfect unanimity. You will perceive, Sir, that I allude to your eminent colleague, who has presided over our deliberations. When I shall have heard him pronounce from that Chair the words “ This Convention stands adjourned *sine die*,” I shall be ready to sing my political *Nunc dimittis* ; for, it will have put a period to three months, the most anxious and painful of a political life neither short nor uneventful. Having said thus much, I hope I may be permitted to add, that, notwithstanding any occasional heat excited by the collision of debate, I part from every member here with the most hearty good will towards all. But, I cannot consent that we shall separate without offering the tribute of my approbation, and inviting the House to add theirs—ininitely more valuable—to the conduct of the presiding officer of this Assembly. If this were a suitable occasion, I might embrace within the scope of my motion and of my remarks his public conduct and character elsewhere, with which I have been long and intimately acquainted : but this, as it would be misplaced, so would it be fulsome—I shall, therefore, restrict myself to the following motion :

“ *Resolved*, That the impartiality and dignity with which Philip P. Barbour, Esq. hath presided over the deliberations of this House, and the distinguished ability whereby he hath facilitated the dispatch of business, receive the best thanks of the Convention.”

The resolution was agreed to unanimously, and so entered on the Journal.

(After an account for printing had been passed, and a compensation of \$ 200 voted to the Secretary to cover the expense of transcribing the minutes into a volume,)

Mr. Barbour resumed the Chair, and addressed the Convention as follows :

Gentlemen of the Convention—Never in my life, did I feel such strong emotions, as those with which I now address you.

The resolution which you have just passed, expressive of your approbation of my conduct, as presiding officer of this Assembly, is an evidence of your good opinion, which I shall long cherish, as one of the most pleasing recollections of my life ; and for which, I have no return to make, except the expression of my sincere thanks and profound acknowledgments. To be a member even, of such an assembly as this, imports a large and gratifying share of public confidence ; to be called to preside over its deliberations, is an honour sufficient to fill the measure of a higher aspiration than I dare pretend to ; to receive the unanimous testimony of its approbation, under the circumstances which attend it, inspires me with the deepest sense of gratitude. It has been said, gentlemen, that the power of legislation is the highest trust which man can confide to his fellow-man : this is true, in those Governments in which written Constitutions are unknown ; but the trust which has been confided to us, is a yet higher one ; for to us, has been delegated the power, of representing the people in their primary sovereign character ; of forming a Constitution, which, if ratified, will create that very legislative power which is elsewhere deemed to be omnipotent ; which will prescribe to it, the law of its action, and the orbit in which alone, it can rightfully move.

We have been for a long time, laboriously engaged in this great work ; our labours are now at an end ; the Constitution which we have formed, is now to be submitted to the people, for their ratification or rejection.

In the language, substantially, of the Convention which framed our Federal Constitution, I will say—that it will meet the full and entire approbation of every portion of the Commonwealth, is not to be expected ; but each will doubtless consider, that had its interests alone been consulted, the consequences would have been particularly disagreeable, or injurious to the others. Whilst, therefore, we cannot expect that it will be considered by the people the best form of Government that could have been devised, we may indulge the hope, that as it is the best the discordant opinions and conflicting interests of the Commonwealth enabled us to make, it will be received by them, in the spirit of conciliation and compromise ; and be accepted, as “ the result of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable ;” more especially, as it will carry with it this weighty recommendation, that we have been aided in its formation, by the experience and enlightened counsel of the patriarchs of the land ; of men, whom Virginia knows to be her master workmen, in the great art of Constitutional architecture.

The general course of our proceedings, gentlemen, has been characterized by the moderation and forbearance, which became the dignity of the occasion, and the great questions which we have been called to decide. If in the collisions of discussion, an occasional spark of excitement shall have been struck out, I trust, that like that, which is struck from the flint, it will have been extinguished in the moment which gave it birth ; and that we shall separate from each other with that reciprocal feeling

of good will, which will constitute the strongest cement of our union, and bind us together, in all time to come, as a people, *one and indivisible*.

In this spirit, I beseech you, let us return to our constituents, resolved to cast oil upon the waters, as far as we can, to still the agitations of the public mind, and to cause it to settle down, like the unruffled bosom of the ocean, into a state of calm tranquillity.

He who shall contribute to a consummation so devoutly to be wished, will deserve well of his country; and will assuredly receive the approbation of that country, the highest and best reward to faithful public servants.

We are now, gentlemen, upon the eve of a separation, many of us, perhaps, never to meet again—May health and happiness attend you all—May you long live to see this ancient and venerated Commonwealth, prosperous at home, respected abroad—May she be looked up to by our sister States, as an example worthy of all imitation—May she hereafter be considered by them, as she heretofore has been, the key-stone of that arch, which supports our Federal Union, and whose strength I hope and trust, will be increased by every increasing pressure, which shall bear upon it.

On motion of Mr. Leigh, he then pronounced the welcome sentence, "This Convention stands adjourned SINE DIE."

BILL OF RIGHTS.

A Declaration of Rights made by the Representatives of the good people of VIRGINIA, assembled in full and free Convention; which Rights do pertain to them, and their posterity, as the basis and foundation of Government.

(Unanimously adopted, June 12th, 1776.)

1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

3. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or community: of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter or abolish it, in such manner as shall be judged most conducive to the public weal.

4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services, which not being descendible, neither ought the offices of Magistrate, Legislator, or Judge, to be hereditary.

5. That the Legislative and Executive powers of the State should be separate and distinct from the Judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

6. That elections of members to serve as representatives of the people, in Assembly, ought to be free; and that all men, having sufficient evidence of permanent, common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

8. That, in all capital or criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be

compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land, or the judgment of his peers.

9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

10. That general warrants, whereby an officer or messenger, may be commanded to search suspected places, without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

11. That, in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases, the military should be under strict subordination to, and governed by, the civil power.

14. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of *Virginia*, ought to be erected or established within the limits thereof.

15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles.

16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

AN AMENDED CONSTITUTION

OR

FORM OF GOVERNMENT FOR VIRGINIA.

(Adopted by the Convention January 14th, 1830.)

Whereas the Delegates and Representatives of the good people of Virginia, in Convention assembled, on the twenty-ninth day of June, in the year of our Lord one thousand seven hundred and seventy-six: reciting and declaring, that whereas, George the third, King of Great Britain and Ireland, and Elector of Hanover, before that time entrusted with the exercise of the kingly office in the Government of Virginia, had endeavored to pervert the same into a detestable and insupportable tyranny, by putting his negative on laws the most wholesome and necessary for the public good; by denying his Governors permission to pass laws of immediate and pressing importance, unless suspended in their operation for his assent, and when so suspended neglecting to attend to them for many years; by refusing to pass certain other laws, unless the persons to be benefitted by them would relinquish the inestimable right of representation in the Legislature; by dissolving legislative assemblies repeatedly and continually, for opposing with manly firmness his invasions of the rights of the people; when dissolved, by refusing to call others for a long space of time, thereby leaving the political system without any legislative head; by endeavouring to prevent the population of our country, and for that purpose obstructing the laws for the naturalization of foreigners; by keeping among us, in time of peace, standing armies and ships of war; by affecting to render the military independent of and superior to the civil power; by combining with others to subject us to a foreign jurisdiction, giving his assent to their pretended acts of legislation, for quartering large bodies of armed troops among us, for cutting off our trade with all parts of the world, for imposing taxes on us without our consent, for depriving us of the benefits of the trial by jury, for transporting us beyond seas to be tried for pretended offences, for suspending our own Legislatures and declaring themselves invested with power to legislate for us in all cases whatsoever; by plundering our seas, ravaging our coasts, burning our towns, and destroying the lives of our people; by inciting insurrections of our fellow-subjects with the allurements of forfeiture and confiscation; by prompting our negroes to rise in arms among us, those very negroes, whom by an inhuman use of his negative he had refused us permission to exclude by law; by endeavouring to bring on the inhabitants of our frontiers, the merciless indian savages, whose known rule of warfare is an undistin-

guished destruction of all ages, sexes and conditions of existence; by transporting hither a large army of foreign mercenaries, to complete the work of death, desolation and tyranny, then already begun with circumstances of cruelty and perfidy unworthy the head of a civilized nation; by answering our repeated petitions for redress with a repetition of injuries; and finally, by abandoning the helm of Government, and declaring us out of his allegiance and protection; by which several acts of misrule, the Government of this country, as before exercised under the Crown of Great Britain, was totally dissolved: did, therefore, having maturely considered the premises, and viewing with great concern the deplorable condition, to which this once happy country would be reduced, unless some regular adequate mode of civil polity should be speedily adopted, and in compliance with the recommendation of the General Congress, ordain and declare a form of Government of Virginia:

And whereas the General Assembly of Virginia, by an act passed on the tenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, entitled, an act to organize a Convention, did authorise and provide for the election, by the people, of Delegates and Representatives, to meet and assemble, in General Convention, at the Capitol in the City of Richmond, on the first Monday in October in the year last aforesaid, to consider, discuss and propose, a new Constitution, or alterations and amendments of the existing Constitution of this Commonwealth, to be submitted to the people and to be by them ratified or rejected:

We, therefore, the Delegates and Representatives of the good people of Virginia, elected and in Convention assembled, in pursuance of the said act of Assembly, do submit and propose to the people, the following Amended Constitution and Form of Government for this Commonwealth, that is to say:

ARTICLE I.

The Declaration of Rights made on the 12th June, 1776, by the representatives of the good people of Virginia assembled in full and free Convention, which pertained to them and their posterity, as the basis and foundation of Government; requiring in the opinion of this Convention no amendment, shall be prefixed to this Constitution, and have the same relation thereto as it had to the former Constitution of this Commonwealth.

ARTICLE II.

The Legislative, Executive and Judiciary Departments, shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that the Justices of the County Courts shall be eligible to either House of Assembly.

ARTICLE III.

1. The Legislature shall be formed of two distinct branches, which together shall be a complete Legislature, and shall be called the General Assembly of Virginia.

2. One of these shall be called The House of Delegates, and shall consist of one hundred and thirty-four members, to be chosen, annually, for and by the several counties, cities, towns and boroughs of the Commonwealth; whereof thirty-one Delegates shall be chosen for and by the twenty-six counties lying West of the Alleghany mountains; twenty-five for and by the fourteen counties lying between the Alleghany and Blue Ridge of mountains; forty-two for and by the twenty-nine counties lying East of the Blue Ridge of mountains and above tide-water; and thirty six for and by the counties, cities, towns and boroughs lying upon tide-water, that is to say: Of the twenty-six counties lying West of the Alleghany, the counties of Harrison, Montgomery, Monongalia, Ohio and Washington, shall each elect two Delegates; and the counties of Brooke, Cabell, Grayson, Greenbrier, Giles, Kanawha, Lee, Lewis, Logan, Mason, Monroe, Nicholas, Pocahontas, Preston, Randolph, Russell, Scott, Tazewell, Tyler, Wood and Wythe, shall each elect one Delegate. Of the fourteen counties lying between the Alleghany and Blue Ridge, the counties of Frederick and Shenandoah, shall each elect three Delegates; the counties of Augusta, Berkeley, Botetourt, Hampshire, Jefferson, Rockingham and Rockbridge, shall each elect two Delegates; and the counties of Alleghany, Bath, Hardy, Morgan and Pendleton, shall each elect one Delegate. Of the twenty-nine counties lying East of the Blue Ridge and above tide-water, the county of Loudoun, shall elect three Delegates; the counties of Albemarle, Bedford, Brunswick, Buckingham, Campbell, Culpeper, Fauquier, Franklin, Halifax, Mecklenburg and Pittsylvania, shall each elect two Delegates; and the counties of Amelia, Amherst, Charlotte, Cumberland, Dinwiddie, Fluvanna, Goochland, Henry, Louisa, Lunenburg, Madison, Nelson, Nottoway, Orange, Patrick, Powhatan and Prince Edward, shall each elect one Delegate. And of the counties, cities, towns and boroughs lying on tide-water, the counties of

Accomack and Norfolk, shall each elect two Delegates; the counties of Caroline, Chesterfield, Essex, Fairfax, Greenville, Gloucester, Hanover, Henrico, Isle of Wight, King & Queen, King William, King George, Nansemond, Northumberland, Northampton, Princess Anne, Prince George, Prince William, Southampton, Spottsylvania, Stafford, Sussex, Surry and Westmoreland, and the city of Richmond, the borough of Norfolk, and the town of Petersburg, shall each elect one Delegate; the counties of Lancaster and Richmond, shall together elect one Delegate; the counties of Matthews and Middlesex, shall together elect one Delegate; the counties of Elizabeth City and Warwick, shall together elect one Delegate; the counties of James City and York, and the city of Williamsburg, shall together elect one Delegate; and the counties of New Kent and Charles City, shall together elect one Delegate.

3. The other House of the General Assembly shall be called the Senate, and shall consist of thirty-two members, of whom thirteen shall be chosen for and by the counties lying West of the Blue Ridge of mountains, and nineteen for and by the counties, cities, towns and boroughs lying East thereof; and for the election of whom, the counties, cities, towns and boroughs shall be divided into thirty-two districts, as herein after provided. Each county of the respective districts, at the time of the first election of its Delegate or Delegates under this Constitution, shall vote for one Senator; and the Sheriffs or other officers holding the election for each county, city, town or borough, within five days at farthest after the last county, city, town or borough election in the district, shall meet at some convenient place, and from the polls so taken in their respective counties, cities, towns or boroughs, return as a Senator the person who shall have the greatest number of votes in the whole district. To keep up this Assembly by rotation, the districts shall be equally divided into four classes, and numbered by lot. At the end of one year after the first general election, the eight members elected by the first division shall be displaced, and the vacancies thereby occasioned, supplied from such class or division by new election in the manner aforesaid. This rotation shall be applied to each division according to its number, and continued in due order annually. And for the election of Senators, the counties of Brooke, Ohio and Tyler, shall form one district: the counties of Monongalia, Preston and Randolph, shall form another district: the counties of Harrison, Lewis and Wood, shall form another district: the counties of Kanawha, Mason, Cabell, Logan and Nicholas, shall form another district: the counties of Greenbrier, Monroe, Giles and Montgomery, shall form another district: the counties of Tazewell, Wythe and Grayson, shall form another district: the counties of Washington, Russell, Scott and Lee, shall form another district: the counties of Berkeley, Morgan and Hampshire, shall form another district: the counties of Frederick and Jefferson shall form another district: the counties of Shenandoah and Hardy shall form another district: the counties of Rockingham and Pendleton shall form another district: the counties of Augusta and Rockbridge shall form another district: the counties of Alleghany, Bath, Pocahontas and Botetourt, shall form another district: the counties of Loudoun and Fairfax shall form another district: the counties of Fauquier and Prince William shall form another district: the counties of Stafford, King George, Westmoreland, Richmond, Lancaster and Northumberland, shall form another district: the counties of Culpeper, Madison and Orange, shall form another district: the counties of Albemarle, Nelson and Amherst, shall form another district: the counties of Fluvanna, Goochland, Louisa and Hanover, shall form another district: the counties of Spottsylvania, Caroline and Essex, shall form another district: the counties of King & Queen, King William, Gloucester, Matthews and Middlesex, shall form another district: the counties of Accomack, Northampton, Elizabeth City, York and Warwick, and the city of Williamsburg, shall form another district: the counties of Charles City, James City, New Kent and Henrico, and the city of Richmond, shall form another district: the counties of Bedford and Franklin, shall form another district: the counties of Buckingham, Campbell and Cumberland, shall form another district: the counties of Patrick, Henry and Pittsylvania, shall form another district: the counties of Halifax and Mecklenburg shall form another district: the counties of Charlotte, Lunenburg, Nottoway and Prince Edward, shall form another district: the counties of Amelia, Powhatan and Chesterfield, and the town of Petersburg, shall form another district: the counties of Brunswick, Dinwiddie and Greenville, shall form another district: the counties of Isle of Wight, Prince George, Southampton, Surry and Sussex, shall form another district: and the counties of Norfolk, Nansemond and Princess Anne, and the borough of Norfolk, shall form another district.

4. It shall be the duty of the Legislature, to re-apportion, once in ten years, to wit: in the year 1841, and every ten years thereafter, the representation of the counties, cities, towns and boroughs, of this Commonwealth, in both of the Legislative bodies: *Provided, however,* That the number of Delegates from the aforesaid great districts, and the number of Senators from the aforesaid two great divisions, respectively, shall neither be increased nor diminished by such re-apportionment. And

when a new county shall hereafter be created, or any city, town or borough, not now entitled to separate representation in the House of Delegates, shall have so increased in population as to be entitled, in the opinion of the General Assembly, to such representation, it shall be the duty of the General Assembly to make provision by law for securing to the people of such new county, or such city, town or borough, an adequate representation. And if the object cannot otherwise be effected, it shall be competent to the General Assembly to re-apportion the whole representation of the great district containing such new county, or such city, town or borough, within its limits; which re-apportionment shall continue in force till the next regular decennial re-apportionment.

5. The General Assembly, after the year 1841, and at intervals thereafter of not less than ten years, shall have authority, two-thirds of each House concurring, to make re-apportionments of Delegates and Senators, throughout the Commonwealth, so that the number of Delegates shall not at any time exceed 150, nor of Senators 36.

6. The whole number of members to which the State may at any time be entitled in the House of Representatives of the United States, shall be apportioned as nearly as may be, amongst the several counties, cities, boroughs and towns of the State, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years and excluding indians not taxed, three-fifths of all other persons.

7. Any person may be elected a Senator who shall have attained to the age of thirty years, and shall be actually a resident and freeholder within the district, qualified by virtue of his freehold, to vote for members of the General Assembly according to this Constitution. And any person may be elected a member of the House of Delegates, who shall have attained the age of twenty-five years, and shall be actually a resident and freeholder within the county, city, town, borough or election district, qualified by virtue of his freehold, to vote for members of the General Assembly according to this Constitution: *Provided*, That all persons holding lucrative offices and ministers of the Gospel and priests of every denomination, shall be incapable of being elected members of either House of Assembly.

8. The members of the Assembly shall receive for their services a compensation to be ascertained by law, and paid out of the public Treasury: but no law increasing the compensation of the members shall take effect until the end of the next annual session after such law shall have been enacted. And no Senator or Delegate shall, during the term for which he shall have been elected, be appointed to any civil office of profit under the Commonwealth, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by elections by the people.

9. The General Assembly shall meet once or oftener every year. Neither House, during the session of the Legislature, shall without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide. And each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election for supplying intermediate vacancies. But if vacancies shall occur by death or resignation, during the recess of the General Assembly, such writs may be issued by the Governor, under such regulations as may be prescribed by law. Each House shall judge of the election, qualification and returns of its members; may punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member, but not a second time for the same offence.

10. All laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates.

11. The privilege of the Writ of *Habeas Corpus* shall not in any case be suspended. The Legislature shall not pass any bill of attainder; or any *ex post facto* law; or any law impairing the obligation of contracts; or any law, whereby private property shall be taken for public uses, without just compensation; or any law abridging the freedom of Speech, or of the Press. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise affect, diminish or enlarge their civil capacities. And the Legislature shall not prescribe any religious test whatever; nor confer any peculiar privileges or advantages on any one sect or denomination; nor pass any law requiring or authorising any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry; but it shall be left free to every

person to select his religious instructor, and to make for his support such private contract as he shall please.

12. The Legislature may provide by law that no person shall be capable of holding or being elected to any post of profit, trust or emolument, civil or military, Legislative, Executive or Judicial, under the Government of this Commonwealth, who shall hereafter fight a duel, or send or accept a challenge to fight a duel, the probable issue of which may be the death of the challenger or challenged, or who shall be a second to either party, or shall in any manner aid or assist in such duel, or shall be knowingly the bearer of such challenge or acceptance; but no person shall be so disqualified by reason of his having heretofore fought such duel, or sent or accepted such challenge, or been second in such duel, or bearer of such challenge or acceptance.

13. The Governor, the Judges of the Court of Appeals and Superior Courts, and all others offending against the State, either by mal-administration, corruption, neglect of duty, or any other high crime or misdemeanor, shall be impeachable by the House of Delegates; such impeachment to be prosecuted before the Senate, which shall have the sole power to try all impeachments. When sitting for that purpose, the Senate shall be on oath or affirmation: and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust or profit, under the Commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

14. Every white male citizen of the Commonwealth, resident therein, aged twenty-one years and upwards, being qualified to exercise the Right of Suffrage according to the former Constitution and laws; and every such citizen, being possessed, or whose tenant for years, at will or at sufferance, is possessed, of an estate of freehold in land of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen, being possessed, as tenant in common, joint tenant or parcener, of an interest in or share of land, and having an estate of freehold therein, such interest or share being of the value of twenty-five dollars, and so assessed to be if any assessment thereof be required by law; and every such citizen being entitled to a reversion or vested remainder in fee, expectant on an estate for life or lives, in land of the value of fifty dollars, and so assessed to be if any assessment thereof be required by law; (each and every such citizen, unless his title shall have come to him by descent, devise, marriage or marriage-settlement, having been so possessed or entitled for six months); and every such citizen, who shall own and be himself in actual occupation of a leasehold estate, with the evidence of title recorded two months before he shall offer to vote, of a term originally not less than five years, of the annual value or rent of twenty dollars; and every such citizen, who for twelve months next preceding has been a house-keeper and head of a family within the county, city, town, borough or election district where he may offer to vote, and shall have been assessed with a part of the revenue of the Commonwealth within the preceding year, and actually paid the same—and no other persons—shall be qualified to vote for members of the General Assembly in the county, city, town or borough, respectively, wherein such land shall lie, or such house-keeper and head of a family shall live. And in case of two or more tenants in common, joint tenants or parceners, in possession, reversion or remainder, having interest in land, the value whereof shall be insufficient to entitle them all to vote, they shall together have as many votes as the value of the land shall entitle them to: and the Legislature shall by law provide the mode in which their vote or votes shall in such case be given: *Provided, nevertheless*, That the Right of Suffrage shall not be exercised by any person of unsound mind, or who shall be a pauper, or a non-commissioned officer, soldier, seaman or marine, in the service of the United States, or by any person convicted of any infamous offence.

15. In all elections in this Commonwealth, to any office or place of trust, honour or profit, the votes shall be given openly, or *viva voce*, and not by ballot.

ARTICLE IV.

1. The Chief Executive power of this Commonwealth, shall be vested in a Governor, to be elected by the joint vote of the two Houses of the General Assembly. He shall hold his office, during the term of three years, to commence on the first day of January next succeeding his election, or on such other day, as may from time to time be prescribed by law; and he shall be ineligible to that office, for three years next after his term of service shall have expired.

2. No person shall be eligible to the office of Governor, unless he shall have attained the age of thirty years, shall be a native citizen of the United States, or shall have been a citizen thereof at the adoption of the Federal Constitution, and shall have been a citizen of this Commonwealth for five years next preceding his election.

3. The Governor shall receive for his services a compensation to be fixed by law, which shall be neither increased nor diminished, during his continuance in office.

4. He shall take care that the laws be faithfully executed; shall communicate to the Legislature, at every session, the condition of the Commonwealth, and recommend to their consideration such measures as he may deem expedient. He shall be Commander-in-chief of the land and naval forces of the State. He shall have power to embody the militia, when in his opinion, the public safety shall require it; to convene the Legislature, on application of a majority of the members of the House of Delegates, or when, in his opinion, the interest of the Commonwealth may require it; to grant reprieves and pardons, except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct; to conduct, either in person, or in such manner as shall be prescribed by law, all intercourse with other and foreign States; and during the recess of the Legislature, to fill, *pro tempore*, all vacancies in those offices, which it may be the duty of the Legislature to fill permanently: *Provided*, That his appointments to such vacancies shall be by commissions to expire at the end of the next succeeding session of the General Assembly.

5. There shall be a Council of State, to consist of three members, any one or more of whom may act. They shall be elected by joint vote of both Houses of the General Assembly, and remain in office three years. But of those first elected, one, to be designated by lot, shall remain in office for one year only, and one other to be designated in like manner, shall remain in office for two years only. Vacancies occurring by expiration of the term of service, or otherwise, shall be supplied by elections made in like manner. The Governor shall, before he exercises any discretionary power conferred on him by the Constitution and laws, require the advice of the Council of State, which advice shall be registered in books kept for that purpose, signed by the members present and consenting thereto, and laid before the General Assembly when called for by them. The Council shall appoint their own Clerk, who shall take an oath to keep secret such matters as he shall be ordered by the Board to conceal. The Senior Councillor shall be Lieutenant-Governor, and in case of the death, resignation, inability or absence of the Governor from the seat of Government, shall act as Governor.

6. The manner of appointing militia officers shall be provided for by law; but no officer below the rank of a Brigadier General, shall be appointed by the General Assembly.

7. Commissions and grants shall run in the name of the Commonwealth of Virginia, and bear teste by the Governor, with the seal of the Commonwealth annexed.

ARTICLE V.

1. The Judicial power shall be vested in a Supreme Court of Appeals, in such Superior Courts as the Legislature may from time to time ordain and establish, and the Judges thereof, in the County Courts, and in Justices of the Peace. The Legislature may also vest such jurisdiction as shall be deemed necessary in Corporation Courts, and in the Magistrates who may belong to the corporate body. The jurisdiction of these tribunals, and of the Judges thereof, shall be regulated by law. The Judges of the Supreme Court of Appeals and of the Superior Courts, shall hold their offices during good behaviour, or until removed in the manner prescribed in this Constitution; and shall, at the same time, hold no other office, appointment, or public trust; and the acceptance thereof by either of them shall vacate his judicial office.

2. No law abolishing any court shall be construed to deprive a Judge thereof of his office, unless two-thirds of the members of each House present concur in the passing thereof; but the Legislature may assign other Judicial duties to the Judges of courts abolished by any law enacted by less than two-thirds of the members of each House present.

3. The present Judges of the Supreme Court of Appeals, of the General Court, and of the Superior Courts of Chancery, shall remain in office until the termination of the session of the first Legislature elected under this Constitution, and no longer.

4. The Judges of the Supreme Court of Appeals and of the Superior Courts shall be elected by the joint vote of both Houses of the General Assembly.

5. The Judges of the Supreme Court of Appeals and of the Superior Courts shall receive fixed and adequate salaries, which shall not be diminished during their continuance in office.

6. Judges may be removed from office by a concurrent vote of both Houses of the General Assembly; but two-thirds of the members present must concur in such vote, and the cause of removal shall be entered on the Journals of each. The Judge against whom the Legislature may be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least twenty days before the day on which either House of the General Assembly shall act thereupon.

7. On the creation of any new county, Justices of the Peace shall be appointed, in the first instance, in such manner as may be prescribed by law. When vacancies shall occur in any county, or it shall, for any cause, be deemed necessary to increase the number, appointments shall be made by the Governor, on the recommendation of the respective County Courts.

8. The Attorney-General shall be appointed by joint vote of the two Houses of the General Assembly, and commissioned by the Governor, and shall hold his office, during the pleasure of the General Assembly. The Clerks of the several courts, when vacancies shall occur, shall be appointed by their respective courts, and the tenure of office, as well of those now in office as of those who may be hereafter appointed, shall be prescribed by law. The Sheriffs and Coroners shall be nominated by the respective County Courts, and when approved by the Governor, shall be commissioned by him. The Justices shall appoint Constables. And all fees of the aforesaid officers, shall be regulated by law.

9. Writs shall run in the name of the Commonwealth of Virginia, and bear teste by the Clerks of the several courts. Indictments shall conclude, Against the peace and dignity of the Commonwealth.

ARTICLE VI.

A Treasurer shall be appointed annually by joint vote of both Houses.

ARTICLE VII.

The Executive Department of the Government shall remain as at present organized, and the Governor and Privy Councillors shall continue in office, until a Governor elected, under this Constitution, shall come into office; and all other persons in office when this Constitution shall be adopted, except as is herein otherwise expressly directed, shall continue in office, till successors shall be appointed, or the law shall otherwise provide; and all the Courts of Justice now existing shall continue with their present jurisdiction, until and except so far as, the Judicial system may or shall be hereafter otherwise organized by the Legislature.

Done in Convention in the City of Richmond, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty, and in the fifty-fourth year of the Independence of the United States of America.

PHILIP P. BARBOUR,
President of the Convention.

D. BRIGGS,
Secretary of the Convention.

SCHEDULE.

Ordered, that the roll containing the draught of the Amended Constitution adopted by this Convention, and by it submitted to the people of this Commonwealth, for their ratification or rejection, be enclosed by the Secretary in a case proper for its preservation, and deposited among the archives of the Council of State.

Ordered, that the Secretary do cause the Journal of the proceedings of this Convention, to be fairly entered in a well bound book, and after the same shall have been signed by the President, and attested by the Secretary, that he deposit the same, together with all the original documents in the possession of the Convention, and connected with its proceedings, among the archives of the Council of State; and further, that he cause ten printed copies of the said Journal to be well bound, and deposited in the Public Library.

Ordered, that the President of the Convention, do certify a true copy of the Amended Constitution to the General Assembly now in session; and that the General Assembly be and they are hereby requested to make any additional provisions by law, which may be necessary and proper for submitting the same to the voters thereby qualified to vote for members of the General Assembly at the next April elections, and for organizing the Government under the Amended Constitution, if case it shall be approved and ratified by such voters.

ENTIRE OFFICIAL POLL

ON THE

NEW CONSTITUTION OF VIRGINIA.

	<i>Ratifying.</i>	<i>Rejecting.</i>		<i>Ratifying.</i>	<i>Rejecting.</i>
Accomaack,	266	70	Brought up,	15,340	7,316
Albemarle,	626	7	Mason,	31	369
Alleghany,	80	72	Matthews,	123	35
Amelia,	250	3	Mecklenburg,	488	24
Amherst,	349	26	Middlesex,	123	14
Augusta,	285	270	Monongalia,	305	460
Bath,	93	147	Monroe,	19	451
Bedford,	609	36	Montgomery,	194	670
Berkeley,	95	161	Morgan,	29	156
Botetourt,	660	12	Nansemond,	162	72
Brooke,	00	371	Nelson,	332	5
Brunswick,	382	27	New Kent,	156	34
Buckingham,	565	45	Nicholas,	28	325
Cabell,	5	334	Norfolk County,	230	23
Campbell,	446	22	Northampton,	48	32
Caroline,	331	20	Northumberland,	286	7
Charles City,	92	22	Nottoway,	214	5
Charlotte,	335	12	Ohio,	3	643
Chesterfield,	461	15	Orange,	417	18
Culpeper,	921	26	Patrick,	274	246
Cumberland,	293	16	Pendleton,	58	219
Dinwiddie,	327	21	Pittsylvania,	955	40
Elizabeth City,	110	55	Pocahontas,	9	228
Essex,	248	15	Powhatan,	238	10
Fairfax,	184	13	Preston,	121	357
Fauquier,	468	36	Prince Edward,	328	3
Fluvanna,	243	17	Princess Anne,	285	88
Franklin,	593	138	Prince George,	142	4
Frederick,	451	438	Prince William,	183	52
Giles,	21	556	Randolph,	4	565
Gloucester,	252	62	Richmond County,	126	51
Goochland,	198	3	Rockbridge,	416	125
Grayson,	70	649	Rockingham,	457	49
Greenbrier,	34	464	Russell,	86	240
Greensville,	112	5	Scott,	155	297
Halifax,	636	15	Shenandoah,	671	64
Hampshire,	241	211	Southampton,	347	8
Hanover,	359	7	Spottsylvania,	452	16
Hardy,	63	120	Stafford,	204	58
Harrison,	8	1,112	Surry,	108	36
Henrico,	280	46	Sussex,	259	2
Henry,	208	71	Tazewell,	35	423
Isle of Wight,	246	8	Tyler,	5	299
James City,	71	33	Warwick,	2	63
Jefferson,	243	53	Washington,	556	175
Kanawha,	42	266	Westmoreland,	106	33
King and Queen,	262	22	Wood,	28	410
King George,	102	7	Wythe,	41	625
King William,	187	12	York,	76	43
Lancaster,	73	83	Norfolk Borough,	198	38
Lee,	330	99	Petersburg,	272	5
Lewis,	10	546	Richmond City,	301	19
Logan,	2	255	Williamsburg,	29	13
Loudoun,	505	128			
Louisa,	543	32		26,055	15,563
Lunenburg,	218	4		15,563	
Madison,	256	00			
Carried up,	15,340	7,316	Majority,	10,492	

APPENDIX.

(No. 1.)

*Substance of Governor GILES's Address to the Executive Committee, on Saturday, October the 17th, 1829. (Made at its request.)
Referred to in page 257 of these Debates.*

MR. GILES introduced the address, by begging the Committee to be assured, that he felt a high sense of the honor conferred upon him, by a call to present to the Committee his views of the interesting subjects then under its consideration; and that while it would give him sincere pleasure to comply with the call, he had not the vanity to presume, that any thing he could say would influence the opinion or vote of any member of the Committee. But, he could not avoid expressing the high satisfaction he felt at the spirit of liberality, harmony and concession, which had marked the proceedings of that Committee from their commencement to the present time. Nor could he help expressing at the same time, the deep concern and regret he felt at the equality of votes, or near approach to it, which had been given upon several of the most interesting subjects, as well by this as by the other Committees of the Convention. He could not, however, entirely suppress the hope, that by persevering in the same friendly and liberal comparison of opinions, which had heretofore been manifested in the Committee, a nearer approach to unanimity might hereafter be had, or at least, greater majorities might be found for adopting some one course of measures. Mr. G. then observed, that in executing the task he had undertaken, he proposed to present to the Committee nothing more than an outline compendious view of the whole subjects before them, as well as of the particular one more immediately under consideration. Relying upon the intelligence of every member of the Committee, he proposed to adventure but little into minute demonstration or argument, and hoped that each member would fill up for himself, from his own reflections, the vacuums which must necessarily attend a mere outline view of this, as well as every other subject.

Mr. G. then said, he was himself deeply impressed, and he was confident every other member of the Committee was equally so, with the great importance of the objects for which they were called together, and of the powers with which they were invested to effectuate these objects. The one was nothing less than the formation of a social compact or written Constitution for the whole people of Virginia—the other, nothing less than the whole sovereign rights and powers of the same people. These involve trusts and duties of high and paramount impression, and demand the best efforts of our best deliberations to carry them into effect in such a manner as to answer the just expectations of our constituents and of the world. The object of every social compact or written Constitution, is to establish a practical Government, and to prescribe rules for its observance, thereby limiting its powers within a prescribed sphere of action. Fundamental laws must necessarily be general in their character, otherwise they would swell into a formidable code of legislative enactments. These general laws are intended as guides to the practical Government established by them, and are to such practical Government what that Government is to the individual citizens. The social compact or written Constitution prescribes rules of conduct for the observance of the practical Government. The practical Government prescribes rules of conduct for the observance of its individual citizens. All Governments profess to have the same objects in view in their formation—the safety of the people from all violence without or within—the protection of person—and the protection of property. These last are effected by an equal administration of justice to all. All these great objects can only be effected, by drawing from nature great general principles, applicable to the science of politics, for the formation of a practical Government, which, from its own intrinsic operation, shall produce good moral tendencies on the community over which it is established. Two general modes only have heretofore been devised for the formation of Governments, with the exceptions of a few Republics of very limited extent of territory and population. The one

through the notion of inviolability—the other, through the principle of responsibility. Governments founded on the notion of inviolability, are far more ancient, and even at the present day far more numerous than those founded on the principle of responsibility. The notion of inviolability is not found in nature. It is of human invention. It is the offspring of fraud and cunning, supported and effectuated by force. The admission that an agent, transacting the concerns of his principal, becomes thereby invested with the powers to exercise jurisdiction over both the person and property of such principal, through an invented faculty of inviolability, is repugnant to every dictate of nature, and of common sense. The notion of inviolability cannot, therefore, be found in nature, and consequently not in science—yet the elder Mr. Adams has not hesitated to declare, that the British Government, which is founded on the notion of inviolability, is the only scientific Government in the world. This form of Government professes to derive its origin from something above human rights; and for the want of something more intelligible, asserts that origin to be divine—derived from God himself. This origin, if true, would be solid, unquestionable and irresistible. But, it is not true—it is the mere invention of fraud and cunning. Responsibility is a principle found in nature—yet the Governments founded on it are of comparatively modern date. The North American Constitutions, so called for distinction's sake, are at this day the only ones founded on this principle. Attempts at its imitation have been made by the Mexican and South American Republics; but, they are at this time in such an unsettled state, that no positive conclusions can be drawn as to their final destinies. The first of these Constitutions is of little more than half a century standing, and is the one we are now engaged in amending or destroying. Responsibility is a principle derived from nature. It consists simply in the obligations, that every agent, who undertakes to manage the concerns of his principal, thereby takes upon himself to account for his conduct, in their management, to his principal. It is the plain, natural principle of the accountability of the agent to his principal. Every dictate of our nature—every dictate of the innate or moral sense, attests the truth of this principle. This principle of responsibility is the true ground of the representative system of Government, and is founded upon the natural rights of man, in his individual character. These form the basis of every social compact or written Constitution. Every social compact or written Constitution is formed by the distribution of these rights between the governors and the governed. This distribution, when made, constitutes what is called the Republican form of Government; and whether such Government, when formed, be good or bad, must essentially depend upon the wise or unwise distribution of these rights. Inviolability is the basis of the Monarchical form of Government. All the North American Constitutions, as well State as Federal, profess to be founded on this principle of responsibility in all their departments. The Federal Executive professes to be founded on the same principle, but the test of its responsibility has been found in practice, inefficacious and unavailing. That test, during the continuance of the Executive in office, consists only in impeachment, which is found in practice to be an inefficient test. But, the real inefficiency of the responsibility of the Executive, consists in the great patronage originally bestowed upon it, and its vast accumulation since that time. Patronage is the offspring of inviolability, not of responsibility—and in that consists the great error in the organization of the Federal Executive. It is the anomalous adaptation of a Monarchical Executive to a Republican Legislature. Patronage is the natural enemy of responsibility, and has been seen at open war with it in the administration of the Federal Government, particularly since its vast accumulation within the last fifteen or twenty years. The Virginia Executive is founded on the same principle of responsibility, but it is an actual, efficacious one—not merely virtual or nominal. Its test is the best that human wisdom could devise.

Mr. G. expressed extreme regret, that this part of our Constitution should have been so much misrepresented through the public prints, and he feared, so little understood through the State generally. He, therefore, begged the dispassionate and deep reflections of the Committee to this branch of the subject, banishing, as far as practicable, all former prepossessions—and he hoped to be indulged with a more minute examination and illustration of this part of the subject. He said, the Governor and Council were respectively elected by joint ballot of both branches of the Legislature. The present Constitution requires, that a regular journal of the proceedings of the Council should be kept and subscribed by the Councillors themselves. The Councillors are made advisers of the Governor by the Constitution, and these journals, containing minutes of all their advice, are at all times subject to the call of the General Assembly, and are in fact annually called for by the House of Delegates. In these provisions will be seen a complete and perfect test of the accountability of the Councillors to their electors. The same journals furnish the test of the accountability of the Governor. He is required to follow, or refuse to follow, the advice of the Council—and, in either case, the journals will exhibit his conduct; and, therefore, furnish a perfect test of his responsibility also. But, the tests of responsibility do not

stop here. The Constitution contains a provision for excluding, periodically, two of the Councillors, instead of leaving their offices to expire periodically, and thus adds greatly to the efficacy and severity of the test of their responsibility. This provision has generally been designated by the term "ostracism," as indicating its extreme severity. In practice, this extreme severity seems to be universally admitted. Yet, it detracts nothing from the consummate wisdom of its author, the celebrated and venerated George Mason. His object was to have a completely and efficiently responsible Executive, and he was entirely without a model, all pre-existing Governments having been founded on the notion of inviolability. He was compelled, therefore, to resort exclusively to the efforts of his own great independent mind, to effect his own novel, untried conception, and his wisdom is manifested in selecting means best suited to the accomplishment of his ends. The Virginia Executive is the only strictly responsible, and, therefore, the only Republican one known to Mr. G. The error of the celebrated George Mason consisted in a modification of his principle, by pushing this test to an extreme. It probably did not occur to him, that this extreme severity would have immoral tendencies, by calling into action some of the worst of human passions, whenever it should be brought into practical execution. This, however, was its natural tendency, and has been reduced to proof by practice. Hence, it seems unanimously agreed, that this provision should be expunged from the Constitution; for, whenever it is ascertained that any provision, from its own intrinsic operations, tends to produce immoral results, it is surely sufficient ground for its rejection. Equally unfounded are all the charges which have been put into circulation, through the newspapers, against the Constitution itself, that it was the production of an unauthorised body of men, and the effect of hurry and alarm—that little or no deliberation had been employed in its formation. Directly the reverse of truth are all these invented, unfounded suggestions. It was the production of perhaps the wisest duly authorised body of men that ever assembled in the United States, and it was the result of the most perpetual and unceasing labours from the 6th of May, to the 29th of June, 1776. Every provision contained in it was disputed inch by inch, and the best efforts of the soundest heads, the purest hearts, and the best informed minds, were exerted to the utmost to bring it to its consummation—and its wisdom is abundantly manifested by its moral tendencies over the Virginia people for above half a century, and the unparalleled political blessings enjoyed by them during that time. To rescue the existing Virginia Constitution from these unworthy, unfounded imputations brought against it, and to present to the Committee a correct view of the real history of its formation, Mr. G. begged to call its attention to a letter from the late Mr. Jefferson to the late celebrated Judge Woodward, referring to one from Mr. Pendleton, the President of the Convention, containing a sketch of this history. An extract from this letter will be found in a volume of political miscellanies recently compiled by himself, intended to perpetuate that and many other highly important political facts, some of which will be found to be directly the reverse of what he believes they are generally understood to be. Mr. G. then read from this volume the following extract of the letter referred to:

"The fact is unquestionable, that the *Bill of Rights* and the Constitution of Virginia, were drawn originally by George Mason, one of our really great men, and of the first order of greatness. The history of the preamble to the latter is as follows: I was then at Philadelphia with Congress, and knowing that the Convention of Virginia was engaged in forming a plan of Government, I turned my mind to the same subject, and drew a sketch or outline of a Constitution, with a preamble, which I sent to Mr. Pendleton, President of the Convention, on the mere possibility that it might suggest something worth incorporation into that before the Convention. He informed me afterwards, by letter, that he received it on the day on which the Committee of the Whole had reported to the House the plan they had agreed to; that that had been so long in hand, so disputed inch by inch, and the subject of so much altercation and debate, that they were worried with the contentions it had produced, and could not, from mere lassitude, have been induced to open the instrument again; but that being pleased with the *preamble* to mine, they adopted it in the House by way of amendment to the report of the Committee; and thus my preamble became tacked to the work of George Mason. The Constitution, with the preamble, was passed on the 29th of June; and the Committee of Congress had only the day before that reported to that body the draught of the Declaration of Independence. The fact is, that that preamble is prior in composition to the Declaration, and both having the same object of justifying our separation with Great Britain, they used necessarily the same materials of justification; and hence their similitude."

In this extract will be seen the most complete and authentic refutation of all these unworthy and unfounded imputations against the framers of the Constitution, as well as against the Constitution itself. So far are they from being founded in truth, it is here completely demonstrated, that they are directly the reverse of truth. Equally unfounded is the still more degrading imputation, that this Constitution was made in

the midst of peril, and was the hasty effect of terror and alarm. Mr. G. said, he knew it had often been tritely said, that the framers of this Constitution acted "with ropes around their necks," and hence, the false and degrading inference, that the instrument itself was the effect of terror and alarm. It is true that the framers of this Constitution, did act in the midst of the most imminent perils. It is true, that during their deliberations, the country was threatened with armed bands incalculably greater in numbers and in military skill, than any force that could be brought to their defence. But it is equally true, that this appalling force inspired neither terror nor alarm; nor did it disturb in the smallest degree, the equanimity of mind of a single member of the Convention. They continued their deliberations with the most perfect calmness and equanimity of mind, from the 6th of May to the 29th of June, following; exhibiting a more remarkable spectacle of heroic, moral courage, during their deliberations, than of consummate wisdom in the final production of this Constitution—the first social compact that ever was reduced to writing—the first written Constitution that ever brought into practical use, the great principles derived from the natural rights of man. Yes, gentlemen, the 29th of June, 1776, is the first day in which the glorious light of liberty burst forth upon a benighted world, through the resplendent mirror of this Constitution; and that ought to be the great Jubilee day, not only for the Virginia people, but for the whole human race. Mr. G. said, he never could satisfactorily account for the inattention, or almost oblivion, which had been shewn by the people of Virginia, to the 29th day of June, 1776, which ought to be commemorated as the first in the calendar, unless it was for a preference given to the 4th of July, which shortly followed it, and which ushered forth the Declaration of Independence to the world. But, the Declaration of Independence is a paper of incomparably less importance to mankind, than the Virginia Constitution, which was exclusively the production of our Virginian forefathers; and the only possible inducement which he could conceive to justify the people of Virginia, in yielding this preference to the 4th of July for commemoration, instead of the 29th of June, arose from their noble, generous self-denial, for which they have been so justly celebrated on other occasions, in being willing to share the honour and glory of this great political discovery with the people of their sister States, while the Virginian people were, in fact, exclusively entitled to them. The least attention to the subject must admonish us all, that the Constitution of Virginia is a paper of extremely different character from the Declaration of Independence. The Declaration of Independence is a mere act of diplomacy. It is the mere declaration of ambassadors from several sovereign States, which at that time had surrendered up none of their sovereign rights, nor were bound even by any articles of confederation: for, it should be recollected that the articles of confederation were not entered into at the time of the Declaration of Independence, nor for more than two years thereafter—the one having taken place on the 4th of July, 1776, and the other on the 6th of July, 1778. The late projected, abortive Panama Congress, if such a singular, eccentric conception could have been carried into effect, would have presented a precise resemblance of that Congress which made the Declaration of Independence: Whereas the Virginia Constitution is a written social compact, the first ever entered into by man, and forms the most instructive model, not only for the people of the other American States but for the whole human race. Mr. G. then observed that, after having presented this outline view of some of the general principles applicable to some of the subjects which were before them, and having given this concise sketch of the history of the formation of the Virginia Constitution, he would now beg leave to call the attention of the Committee more particularly to the specific subject under its consideration. That subject involves the inquiry as to the best mode of electing the Governor of Virginia. Shall he be elected by the General Assembly, or by the people of Virginia? Mr. G. said he was surprised to hear several highly intelligent gentlemen of the Committee, in speaking upon this subject, make the suggestion, that a Governor elected by the General Assembly would not be, in fact, elected by the people. That there would, in fact, be an essential difference in the character and responsibility of the Governor when elected by the people, and when elected by the Legislature: Whereas he conceived an election by the Legislature, was as much an election by the people, as if the election were made directly by themselves. The mode only is different. The effect the same. This result is the effect of another plain, simple principle in nature, and, in practice, universally received as a legal axiom, "he who acts by another, acts by himself;" or, in other words, that he who causes a thing to be done, does that thing himself. When the people, in their individual characters, have elected their Legislative Representatives and invested those representatives with power to prescribe rules of conduct for their observance, they have done all that is necessary for the security and preservation of their rights and liberties. These rules essentially afford the protection of human rights and liberties. Electing the ministerial officers for carrying these rules into effect, would add nothing to the security of these rights and liberties. The question, therefore, resolves itself into a mere question of fitness, expediency

and convenience. Elections by individuals, in their individual capacity, under certain circumstances, instead of securing to them an extension of rights, might impose upon them onerous duties. In the present case, calling upon the people in their individual character to elect their Governors, Judicial and other ministerial officers, might be considered as imposing an obligatory duty, instead of reserving to them an important right; and might conflict with all just conceptions of elections. What is an election? and what are the essential requisitions in making one? An election for representatives, is an act of choice between candidates. Knowledge of the objects of the choice is essentially necessary in making it rightly. In the election of a Governor of Virginia by the individual voters, how would it be possible for them to be acquainted with the candidates; at least to any material extent? The choice of representatives by individuals should be confined to districts of country of such limited extent, as to enable the individual voter to elect his candidate from his own knowledge, or from knowledge derived from his neighbours in the exercise of his ordinary social intercourse. Individual elections beyond a sphere like this, are merely formal and factious. They are not made upon that kind of knowledge, which will enable the voter to judge correctly of the merits, or demerits of the individual candidates. The inevitable effect, therefore, of imposing upon the individual the duty of making an election beyond a sphere like this, is to throw the voter into the hands of the electioneer, and to subject him to become the sport of the electioneering spirit—the most demoralizing of all others, and therefore the most to be deprecated, and the last that ought to be countenanced or encouraged by extending its scope of action. Even at the present moment, and within the last four years, the most conspicuous examples of this electioneering spirit have been exhibited in open, unblushing public harangues, throughout the whole United States—disgraceful to the electioneer, the people and to the Government. To avoid these deplorable and demoralizing scenes, intermediate elections have been resorted to, and rendered indispensable by the extent of territory and population. This refinement in elections, by intermediate agents, is a principle peculiar to the United States. It is already carried into effect in the election of President and Senators of the United States, and must be much more extensively resorted to upon the increasing extent of inhabited territory and of population—if the people of the United States mean to preserve and to perpetuate their liberties. Mr. G. expressed great regret, that while he was perfectly conscious that nothing could save and perpetuate the liberties of the people of the United States, but intermediate elections, he was compelled, most reluctantly, to admit, that the popular current of the moment is running strongly in favour of the extension of elections by the people individually in their primary assemblies. Whilst, therefore, he thought there was a peculiar unfitness in calling upon the people of Virginia to elect their Governor, Judicial and other ministerial officers, in their individual capacities, he thought the General Assembly was the best and most appropriate tribunal that could be devised for that purpose, and had always heretofore discharged that duty most beneficially both to the people and to the Government. He observed that the General Assembly consisted of persons chosen by the people from every nook and corner of the State; and let the candidate for Governor come from what part of the State he might, there would always be some of the members who would necessarily be acquainted with his qualities and qualifications for the office to which he aspires; and such members always could and always would, as they always have done, communicate this knowledge to others. This is precisely that kind of knowledge which may be perfectly confided in, for the purpose of enabling each individual to make his choice. There is always a presumption too, in favour of this kind of information, from the circumstance, that it is given by one honoured by the votes of his constituents. Besides, the members of the General Assembly, in their ordinary intercourse, soon become acquainted with each other after their arrival at the seat of Government, and are thus enabled, from their own observation, to judge of the degree of credit to be given to such communications. It is not proposed then, to give a preference to the General Assembly in the appointment of ministerial officers, for the want of capacity on the part of the people to judge correctly, but for the want of that kind of knowledge, which would enable them to exercise such capacities correctly. From these considerations, and many others which might be added, it would be much better, he concluded, that the General Assembly should elect the Governor, and all the highest grades of Judicial and ministerial officers, as they have heretofore done, in preference to referring them to the people in their individual characters. Mr. G. said, it should be recollected by the Committee, that the Executive Department formed an essential part of one entire system of Government; is necessarily and intimately connected with the whole, and, therefore, ought to be considered in connection with that one Government as a whole. The Government of Virginia, as a whole, has been found for above half a century's experience, uniformly to have had good, moral tendencies upon society, and to have produced the best moral effects upon its present condition. These happy results could only have arisen from an harmonious co-ope-

ration of all its parts, the Executive Department with the rest, in producing them. The great end, in the formation of all Constitutions should be, to promote the common good; and no Constitution ever yet devised has been found more successful in producing this great end, than the existing Constitution of Virginia. This has been effected by the wise adaptation of all its parts, in their practical operation, to produce one common end, and is founded upon the same principle of nature, which, in practice, constitutes the perfection of all dramatic productions; the tendency of all its incidents to produce an unity of object and an unity of action. The chief means by which this end has been effected in the Virginia Constitution, have been, the tendency of all its parts to place a great preponderancy of the governmental powers in the hands of the middling class of society; through which the great end—the common good—has been most effectually produced and secured. Whenever a Government is so formed, as from its own intrinsic operations, to place a great preponderance of its powers in the hands of the middling class, it may be said to be a near approach to governmental perfection, whatever may be the means used to effect that end. It will be readily seen, however, that such end could never be produced by any Government founded upon the invented notion of inviolability: Because the autocrat is in every case presumed to be invested with all power, derived too, as he pretends, from a divine ordination. In the disposition of governmental powers, the extremes of society should always be avoided. The extreme rich, as well as the extreme poor. Neither extreme can be a safe or beneficial depository of governmental powers. The Constitution of Virginia, Mr. Giles said, had been more successful in placing a great preponderancy of power in the hands of the middling class of society, than any other Government in the world; and in consequence thereof, he believed the moral condition of the population of Virginia, to be sounder and better than that of any other in the world, notwithstanding the mixture in its composition of three castes—the white free—the coloured free—and the coloured slave population, and the very great proportion of this last caste, to the whole free white population. Mr. G. said, he had for a long time bestowed much reflection upon this novel and interesting subject, and had resorted to the best evidence at his command, for the purpose of ascertaining the facts in relation to it. He said the first evidence was of a general and indefinite character, but still, he thought entitled to great respect. It consisted of the general celebrity accorded to Virginians, for an inviolable adherence to moral principles, even in opposition to their own supposed interests. This most honourable celebrity, in favour of Virginians, had been manifested on many occasions, and in various ways, since the abandonment of all moral principles, and the introduction of an unprincipled, bargaining, huckstering and trafficking in the legislation of the Federal Government, alike degrading to its authors and to the Government. It has been particularly attested by the acknowledgements and declarations of the busy authors themselves, of this unprincipled, trafficking course of legislation. It had often been observed, when a proposition was made for introducing a Virginian into any of these trafficking schemes, it is in vain to apply to him; "*He is a Virginian*—Virginians never abandon their principles for their interests." How honourable this celebrity to the Virginian character, and how much indebted are all Virginians to our members of Congress from the commencement of the Government to this day, for this honourable distinction, whose uniform conduct during that whole time has been such, as to draw, even from their political opponents, this reluctant admission. And to what cause can it most rationally be attributed? Certainly to no other than to the uniform moral tendencies of the Virginia fundamental laws, upon the Virginia people, for more than half a century. What other imaginable cause can be assigned for this distinguished effect? And when we see that such effect is produced, is it not perfectly just and rational to ascribe it to that cause in preference to any other? How cautious, therefore, ought we to be, to avoid every interpolation into our Constitution, which might, by possibility, tend to deprive us of this distinguished celebrity? Mr. G. said, that the only other evidence upon this point, to which he had resorted, was through the Penitentiary establishment in this and several other States. His object was to ascertain the number of convictions in each State, compared with the population respectively; and to infer the moral condition of each, from the respective numbers of convictions in each for Penitentiary offences. Mr. G. said, that with this view, shortly after coming into his present office, he instructed Mr. Parsons, the Superintendent of our Penitentiary, when on a visit to the Northern and Eastern States, by personal inspection of the several Penitentiaries, to ascertain several facts, which were reduced to writing, and intended to show the actual number of convicts in each, for Penitentiary offences. This service the Superintendent performed very much to his satisfaction; and, in addition to their systems of prison discipline, obtained an official statement of the most material information called for, from the officers of each Penitentiary establishment. The result of the whole, was highly honorable to the present moral condition of the white population of Virginia, compared with that of any other State, from which the information had been derived; and, of

course, highly honorable to the moral tendencies of our fundamental laws, to which cause alone it must be attributed. It appeared, that at that time the number of convicts in the Penitentiaries and other correctional establishments of New York, exceeded 1,300; and from subsequent information less authentic, it is estimated that the number now exceeds 1,500. The whole population of New York, at the last census, exceeded 1,360,000 and probably now exceeds 1,500,000. The white population of Virginia, at the last census, when fully corrected, was about 660,000—its probable amount at present may be estimated at 800,000. The number of white convicts in the Penitentiary in 1826, was about 140, and there has been no increase of convicts, since that time, corresponding with the increase of population; the number being at this day about 140. Hence, it will appear, that estimating the population of New York at double the free white population of Virginia, there would be rather more than five times as many convicts in New York for Penitentiary offences, than in Virginia, according to their relative population. Mr. G. said, he did not mean to give this statement as strictly and minutely correct, but merely to present general relative results. He said he had been induced to select New York for this comparison, because the late Convention of that State had been frequently resorted to for precedents to influence the measures of this Convention; but he hoped that they would be considered as precedents rather to be shunned than to be followed; for he had the best reasons to believe, that if the same members who formed that Constitution had to act again, they would themselves disavow the very precedents they had set; for he believed that they had done more injury to the former Constitution, by the single provision which introduced the notion of universal suffrage, than could be compensated for by all the other amendments put together; and the very members, who introduced that provision, would be the last to introduce it under the experience of its practical operations, whilst they had now nothing left but the deepest lamentations for their own indiscretion. Mr. G. said, he thought it but an act of justice to the people of New York, to ascribe at least one-half of the Penitentiary offences, committed in that State, to the operation of that fatal measure, and from the electioneering spirit which had been called into action by it. [An inquiry was made of Mr. G. by a member of the Committee, what relative proportion of convicts there was in the Penitentiary of Massachusetts, compared with those in the Penitentiary of Virginia? relying upon the homogeneous population of that State as lessening the proportion against the State of New York, arising, as he presumed, from the mixed character of the population of that State.] Mr. G. replied, that there was a smaller disproportion, which he could not ascertain precisely; but he was confident it was at least two to one against the Massachusetts' population; and was above that proportion in every other State, from which he had received authentic information. Mr. G. said, his enquiries into the relative numbers of convictions for Penitentiary offences, had led to the discovery of another fact, which was unexpected to him; and he presumed would be to others. That there were fewer convictions for Penitentiary offences by slaves, than the free white population of Virginia according to their relative numbers—doubtlessly arising from the comfortable condition of the slaves: That although slaves were not punishable in the Penitentiary, yet all the records of convictions for capital and Penitentiary offences by slaves, are laid before the Executive, and registered in the Penitentiary—and except in capital cases, the convicted slaves were brought there for the purpose of carrying into effect their punishment, by sale and transportation. The number who suffer death for capital offences, is so small, as not to make any difference in the relative results: Whilst the number of the convictions of the free coloured, is about four times greater, according to numbers, than either the free white, or coloured slave population. Mr. G. said, that he was impressed with the strongest convictions that the superior moral condition of the population of Virginia over that of any other State, from which he had received information, was produced more from the unfortunate notion which had been introduced into practice there, of electing universal officers—legislative, judicial, ministerial and military—by universal suffrage, than by any other cause whatever. Mr. G. said, that the extension of the right of suffrage, not only to persons but to offices, had introduced the baneful electioneering spirit, which had produced, and always would produce, more general corruption in society, than almost any other cause whatever. It had introduced an increased waste of whiskey, waste of labour, waste of time, waste of money, and an increased waste of morals, as a necessary and indispensable consequence of all the other ruinous wastes he had mentioned. Mr. G. said, that he had no doubt whatever, that the increased waste of whiskey in New York, since the extension of the right of suffrage there, would be more than all the savings, from all the temperance societies put together. They were ephemeral in their character and effects, and might, perhaps, pass away before Christmas: Whereas, the extension of the principle of suffrage in the Constitution, had heretofore been uniform in its effects, and he feared, would hereafter be eternal. Mr. G. observed, that he had heretofore confined his remarks to the State of New York, in consequence of her Convention

having been frequently held up as a precedent to guide our deliberations. He would now beg to call the attention of the Committee to the effects which had been produced in the State of Alabama, in consequence of the introduction into her Constitution, of this popular notion of election to universal offices by universal suffrage. He stated that he had no invidious feelings towards the people of the State of Alabama, nor of the State of New York, but entertained the best fellow feelings towards both. The account he proposed to give, was taken from a Huntsville newspaper; and related to the election before the last. He said, in forming the Constitution of Alabama, to avoid the onerous burdens, which would be imposed upon the people, by the frequent recurrence of the days of elections, for such a multiplicity of officers, it was speciously provided that all the elections should be held on the same day. The consequence was, that the Governor, the Judges of the Superior Courts, justices of the peace, sheriffs, constables, &c. &c. were seen tramping the whole State, calling upon the people to attend barbecues and frolics of all kinds, for the purpose of qualifying the voters to exercise the great elective franchise, to the best advantage; and for three months before the great day of election, a great portion of the whole people of Alabama were seen prostrated through the potent influence of the delicious fumes of whiskey. When the great jubilee day arrived, for exercising the great elective franchise, by universal suffrage, for the advantage of the State, and the honor and dignity of man, a vast number of bottles of whiskey, arranged in fantastical rows, with fantastical labels around their necks, were exhibited in Huntsville, by the different candidates, and the universal suffrage voters were called upon to drink deep of their Pyerian contents, as the best qualification for the discharge of their great political duties. And so freely and generously did they obey these calls, that when the hour of voting arrived, it was said, there were scarcely sober voters enough to take the votes of the drunken ones. If in carrying into effect, this popular notion of electing universal officers, by universal suffrage, in the Alabama Constitution, the framers had determined, that there should be as many public officers, as there were voters, and that each voter might vote for himself, they would have found themselves precisely where they started, when they commenced the formation of their social compact. How far their present Constitution falls short of this extreme, the Committee may judge. He intreated every gentleman of the Committee seriously to reflect, and to ask himself; whether he did not conscientiously believe, that the extension of the right of suffrage would most essentially tend to the extension of the scope of action for the electioneering spirit; to the extension of vice, intrigue and corruption, and thus to demoralize society to its very core? And if so, ought a provision to be introduced into our Constitution under a firm conviction of its demoralizing tendencies upon our happy society; rendered peculiarly so, by the moral tendencies of our present fundamental laws? From this view of the consequences of the extension of the right of suffrage in other States, how cautious ought we to be against disturbing the calmness and deliberation, characteristic of our elections, by the introduction here of such scenes of revelry, intoxication and corruption!

Mr. G. said, that he had already extended his remarks greatly beyond the limits he had marked out for himself, in the commencement, but he could not resist the desire he felt, to present to the Committee, for its dispassionate consideration, some observations upon the most obvious and deprecated consequences, of placing the powers of Government, into the hands of the extremes of society. For this purpose, he begged leave to present Great Britain to the view of the Committee, as an example, for illustrating the case, of placing all Governmental power in the hands of the extreme rich; both in regard to the moral and political condition of the people. He said, Great Britain, including Ireland, possessed a population, estimated at 21,500,000 souls; that out of this vast population, 280,000 possessed all the property, including the vast public debt in England, Wales, Scotland and Ireland. This most wonderful and important fact, was ascertained by a number of philosophical gentlemen in London, from an actual inspection of the returns of all the persons, who paid the late income tax. Add to this number the unproductive laborers in the army and navy, the tythe and tax-gatherers, estimated at 220,000 more; and it would appear, that all the fiscal laws of Great Britain, were made for 500,000 unproductive laborers, and against 21,000,000 of productive laborers. This is effected by the distribution of the proceeds of labor, through tythe and tax-gatherers, taking from the productive laborers the whole proceeds of their labor, and transferring them to the unproductive laborers. The effects, resulting from placing all Governmental power into the hands of the extreme rich, are thus seen to be, almost to annihilate the middling class, to deprive a great portion of the laboring class of a sufficient portion of bread for their mouths, and covering for their backs, and to pamper the extreme rich with so many luxurious indulgencies, as to debilitate both mind and body; rendering the body almost universally gouty, by the artificial refinements in cookery, and debilitating the mind through sympathy with the body. Such, he believed, to be a true and just picture of the moral and political condition of the people of Great Britain; and yet this condition is often held up to the

American people for their imitation; and, strange to tell, the recent policy of the Federal Government, is driving them on to the like lamentable and deprecated condition. Mr. G. said, that he would then turn the attention of the Committee, to the state of things which took place a few years since in Kentucky; when the electioneering demagogues, availing themselves of the principles of general suffrage, stripped the creditor interest of one-half of their debts, in favor of the debtor interest. This was done by the establishment of about forty Banks, without any capital of intrinsic value, and forcing the reception of the paper, which they issued, upon the creditors, or subjecting them to conditions, which hazarded the loss of their entire debts. The issuing of these paper-bills, as a relief of the debtor against the creditor interest, was hailed with delirious joy, by the unthinking portion of the community, throughout all Kentucky. Yet, in less than four years after this injustice had been practised upon the creditor interest, and the morals of the community materially impaired, it was found necessary to gather in these same bills, and commit them to the flames; and upon every newspaper annunciation, of an *auto de fe* of these bills, the people manifested a still more delirious joy than that which marked their issuing. These most unwise and immoral measures, effectually destroyed all the commercial credit of the State abroad, and demoralized the people at home, by the introduction of universal injustice and corruption. How strongly are we admonished by these examples, against the introduction into our happy system of Government, of any untried expedients, which may, even by possibility, disgrace our people and Government by the like results! Mr. G. said, he had been induced to present these views to the Committee, in the hope, that each member would, for himself, bestow that dispassionate and profound deliberation upon them, which he thought their importance demanded. Mr. G. observed, that he intended to have presented to the view of the Committee, for their consideration, two more highly interesting subjects, but having already detained them much longer in making this address, than he expected, he would defer them to some future occasion, should a proper one hereafter arise.

(No. 2.)

MR. GILES's Speech on the Executive Council, delivered in the Convention on November 28th, 1829. (Referred to on page 490, of this Volume.)

MR. GILES addressed the Convention nearly as follows:

Before we proceed to the abolition of the Executive Council, I should suppose that we ought at least to be agreed as to the facts of the case; that we ought at least to understand what is the present organization of the Council we are about to abolish. I do not believe that at present, we are all agreed, either as to its organization, or its practical operation. Surely, where the facts are attainable and indisputable, we ought to agree upon what they are, before we proceed to act. The gentlemen, (Messrs. Henderson and Doddridge,) commence their objections to the Executive on the supposed ground of its want of responsibility. Now I presume, if these gentlemen shall find that they have misapprehended the matter, and that the Executive of Virginia, instead of being an irresponsible body, is the most responsible that ever existed under any Constitution, they will at least withdraw that objection. Both the gentlemen told us, we had been sent here by the people expressly to abolish the Executive Council, and to extend the Right of Suffrage. If this be so, all deliberation upon those points will be in vain. We have only to obey the will of those who sent us. But I presume it is not the case. I believe we were sent here to deliberate—to deliberate coolly and in a spirit of mutual respect and concession; and after we have satisfied ourselves of the premises, to come to such conclusion as in our own judgments they shall render proper. The gentlemen urged one consideration, in which I am persuaded they are mistaken. They assert, that a majority of the freeholders were in favour of this Convention. Sir, I doubt the fact—I doubted it when I signed the proclamation calling the Convention. My personal impression then was, as it still is, that a majority of the freeholders of Virginia, were not in favour of it, and I mentioned this impression at the time to the Council. I will state the reasons of that impression. There was indeed upon the returns an apparent majority in favour of calling a Convention of more than 4000. But on a critical examination, it will be found that in those counties where the people had no wish for a change in the Constitution, the votes were comparatively few. The freeholders being content with their present condition, were without any stimulus to action. But in the coun-

ties which were anxious for a new Constitution nearly all the freeholders turned out, and their votes were generally given. It is my belief, that if the returns had been equally full all over the State, the majority would have been materially diminished, if not carried to the opposite side. In examining the whole progress of the matter, it will be found, that there were vast numbers who had no personal wish for any alteration in the Constitution, but who voted in favour of a Convention from a disposition to indulge their friends who thought it all important. Many were influenced too, by the popular slang of being willing to trust the people. If these two classes of voters were added to the minority, it is my settled impression that they would have made a majority against calling any Convention at all. But whatever might have been the opinion of the mass of freeholders at that time, I ask of every gentleman to say, whether he does not believe that the majority would be opposed to it now, since they have witnessed the exhibition here; such as it is and has been? Does any gentleman believe, that if the freeholders of Virginia, should speak their minds respecting the call of a Convention this day, we should be any longer favoured with our seats here? I for one do not believe it. Sir, our proceedings have alarmed the country and have furnished the best argument against a Convention that ever was given. They have threatened the total demolition of the first and best Constitution in the world. I have no doubt, the gentlemen are perfectly sincere in their convictions on this subject. I am equally so. I hope we shall compare opinions in mutual confidence and good feeling. My sole object is to get at truth, regardless of all extraneous influences.

As to the responsibility of the Council, I was still more astonished at what fell from the gentlemen. Give me leave on this subject to state what is the actual relation which subsists between the Governor of this Commonwealth and the Executive Council. The gentleman from Brooke, I perceive is misinformed in regard to it, although, he tells us, that his constituents sent him here for the very purpose of abolishing the Council. I ask that gentleman, if there is a single man in his district or in mine, who can be said to know with any accuracy what the relation between the Governor and this Council is? and what his constituents know upon the subject? I am persuaded there is not one, among his constituents or mine, who has such a knowledge on the subject as entitles him to instruct his delegate how to act in relation to it. Surely when the gentleman from Brooke himself is not accurately informed, it cannot be expected that the people should be, who have had so much less opportunity to become so. The gentleman has repeatedly made use, when speaking of the Governor, of the word "commanded." He tells us the Governor is "commanded" by this Council what to do. Now it is not a fact that the Governor is either subject to the command of the Council or under their influence. The Council "advise" the Governor. That is the technical term properly expressing the true relation between them. The Governor has the whole initiatory power. He originates every measure—and he asks the "advice" of his Council upon it, nor do the Council in any case advise him until their advice is so asked. He asks for it in his own words, and those words are entered on the records of the Council. The Governor enters the request in his own words, and the Council enter their reply in their own words. He has full power to refuse to follow their advice, although, in all cases submitted to them, he has no power to act without it. I should, without hesitation, have refused to follow it in my own case, if circumstances had occurred to render such a course, in my judgment, proper and necessary. Let us see now, how this arrangement tests the responsibility of the Governor. The Governor originates a measure and calls for the advice of his Council thereon. Is he not responsible in this? He receives their advice—and he refuses it or not. Is not this on his own responsibility? Surely it is. Every act of his is recorded in the same Journal with the acts of the Council, and that record is laid before the electors once every year. I ask the gentleman to say, whether a Governor can by any possibility be placed in circumstances where he will be more completely responsible. This is all just and proper. It secures no more responsibility than that which every public agent owes to those who appoint him. He is not and cannot be screened in any way. The Council too are called upon to record every act they perform and to sign the record. If they have done wrong, they are thus compelled to give evidence against themselves—and to whom? To those who put them into office, and can put them out of it. Such is the test of their responsibility. I ask the gentleman if he can improve it? If he had a private agent of his own, could he do more than to say to him—first mark down every act of your agency—now sign the record—and then present it to me every year? Sir, responsibility was the very object aimed at by the great and wise man who penned this Constitution. I can see the traits of his wisdom throughout the instrument. All his means go directly to their ends, and all those ends are wise and efficient.

We have heard much said about "THE SCRATCH," about the ostracism of the Council. That, I grant, is an act of severity, such as I never knew in any other case; and though I see even in this the wisdom of which I have just spoken, yet here I think the writer of the Constitution is rather on an extreme. He intended

the Council should be a permanent body, and he devised this expedient to render it a responsible body. Some of the members are obliged to go out at the end of every three years, by a vote which bears the aspect of a mark of disrespect. This is a responsibility, such as I never saw any where. It is a responsibility which is inevitable, uniform, incessant, everlasting. The gentleman indeed says, that the members of which the Council is composed, operate to obscure the responsibility of individuals. But, this is another mistake of the gentleman. Each member who disapproves any vote that is given, has liberty to enter his protest on the record—and this stimulus of the ostracism is found to be sufficient to induce each member to protect himself by his protest, wherever a case of his disapprobation occurs. He knows that the Journal must be openly examined before the Assembly. He knows that some members of the Council must be excluded, and this induces him to take great care to enter his protest against any advice which he may consider erroneous. This is the good effect of the *scratch*. I ask, if it be possible to devise a system of more complete responsibility? It is responsibility in the extreme. It is responsibility carried to excess; for, I would never introduce any test, which, in its own nature, is calculated to have an evil tendency; and the operation of this ostracism certainly has a tendency to excite evil passions. I consider the advice as ill-chosen, and I am in favour of rejecting it. It introduces jealousies when the unfortunate time arrives. When the selection is to be made, it calls into action every angry passion of the human mind. Every member exerts himself to preserve his own reputation, and they almost unavoidably get into collision with each other. The amendment proposed by the gentleman from Richmond, (Mr. Nicholas,) seems to me to present a perfect cure for this evil, and I am ready to adopt it. His amendment keeps up the stability of the Council, and secures at the same time a sufficient degree of responsibility. It is very important, that there should be in the Council experienced members; because, in the exercise of the Executive functions, there are many precedents which ought to be known and remembered. As to the impeachment of the Governor, the gentleman from Brooke was under the impression that it operated while the Governor was in office, and that his term might run out before the impeachment was ended. Hence he argued, that the responsibility arising from impeachment, was merely nominal. Here is another mistaken impression of the gentleman. He will look in vain, in George Mason's Constitution, for features thus incompatible with each other. The impeachment of a Governor takes effect after his term of office has expired; and by producing a disability again to serve, it does operate to secure his responsibility in one mode, although not so efficient as that by re-election.

Sir, if I shall have been so fortunate as to relieve the gentleman from Brooke from a mistaken impression as to the irresponsibility of our Executive, and if it now appears that the Executive of Virginia is in fact and in truth the most responsible Executive now in the world, I hope the Executive Council will not be rejected for a want of responsibility. But it is said, that under the existing Constitution, the Governor possesses no power. Let us look at the power that he has, connected with the Executive Council. 1st. The Governor is the commander-in-chief of the whole militia of the State, and commissions all officers, civil and military, whilst the Executive have the superintendence of all the arms and military materials of all sorts; of the appointments of a greater portion of the militia officers, all County Court magistrates and sheriffs; also, over the Penitentiary establishment, public buildings, &c. &c. The Governor, sometimes with and sometimes without the advice of the Council, has all the power which is given him by law, and every Legislature assigns him important duties. There is always something committed to him to do—and has this trust ever been neglected? Can gentlemen point out a single instance, from the beginning of the Government to this day? They have been racking the Journals, and trying to find some instance of mal-feasance. The gentleman from Brooke gave us the discoveries he had made—we had them spread before us *in extenso*. Sir, I will not injure the gentleman's feelings, by throwing back upon him any recollection of his unfortunate efforts; for, I entertain towards that gentleman nothing but good feeling. But it has served to shew, that after exerting the best efforts of his mind in search of charges, he has been able only to discover such as have served to call forth the highest eulogiums of the highest Judicial tribunal of this State. Unfortunate indeed, therefore, for his side of the question, must be the discoveries of the gentleman. If, after a course of fifty-four years, talents, industry and hypercriticism themselves have not been able to find any thing censurable in the conduct of the Executive, ought an institution so blameless to be rashly thrown down? When gentlemen are called upon to put something as good in its place, they decline the necessary task. It is said, there ought to be a Lieutenant Governor. To do what? To do nothing, at least under the arrangement as it now stands. We have already a Lieutenant Governor, who is President of the Council, and who acts in the room and stead of the Governor, in certain contingencies. If gentlemen mean to give us a Lieutenant Governor without assigning him any duties, then they will give us an officer, who possesses

the title, but has nothing to do. Whenever they attempt to assign him any duties, the utility of a Council immediately presents itself. Gentlemen say, this Council must consist of the Attorney General, who is to give his legal advice, when called upon by the Governor. We have that now. I never hesitate to call on the Attorney General, whenever his official advice is needed on any important point of law, and this advice is always readily given in writing, and when necessary, is laid before the Assembly. Again, gentlemen talk about the Auditor and the Treasurer as fit materials for a Council. But, one great duty of the Executive is to supervise the official conduct of these very officers. How has that supervision been useless? The Executive has detected the defalcations of two treasurers, and has thereby saved much money to the State. Another power exercised by the Governor, is the power of pardoning; but, that subject has been so fully developed by the gentleman from Richmond, (Mr. Nicholas,) that my labour in considering it will be greatly lessened. Cases frequently occur, in the exercise of this power, where the advice of Council is necessary. I certainly never felt above asking it, and I have received very good advice upon that point as well as others, and received it frequently. All the Contingent Fund has to pass under the scrutiny of the Council. Such is the strictness of their examination, that every item of public expense may be said to undergo the scrutiny of a miser. They are examined down to a dollar, and to a cent—and I can truly say, that fewer improper accounts are passed by the Executive of Virginia, than (as I believe) by any other fiscal tribunal under the sun. Sir, the fact has become notorious, in so much that the money-hunters have all abandoned us. They cannot get a cent out of us, without law and voucher. Hence it comes to pass, that our Contingent Fund has been most economically expended. In this department also, the responsibility of the Governor is manifest. The Council never advises him, unless it is asked to do so. The usual practice is to send all accounts, as a matter of course, to the Clerk of the Council. The Governor exercises his responsibility in thus presenting them; and when the accounts are passed by the Council, the Governor is not bound to issue his warrant for the amount—he is at perfect liberty to refuse to do so. The Governor is in the first place responsible for laying an account before the Council. The Council is responsible for advising its payment, and then the Governor is responsible for taking their advice. The whole is matter of record, and that record is submitted to the constituents both of the Governor and the Council. I beg gentlemen to take this view of the subject into consideration. It is possible I may have some partiality for the present members of the Council—it is very natural that I should have. I have been long associated with them, and there may be some attachment between us; but, that attachment shall never induce me to misrepresent one iota of fact in relation to their duties, or to their responsibility. I consider the Executive Council a most important provision in our fundamental law. I know its importance, and I think the Convention ought to hesitate before they put it down. Let us not first vote down the Council, till we have got something ready to put up in its stead. Sir, it is easy to pull down—any body can do that. A simple lisp of the tongue, without the least exercise of the head, will serve to abolish any political institution. But to build up, requires the head! Let gentlemen first shew us their substitute, and prove to us that it is better than the original which they ask us to destroy. The gentleman from Loudoun, (Mr. Henderson,) has with honourable frankness acknowledged, that a person proposing any change, is under obligation to state good reasons for such change. I beg gentlemen to look at the reasons he has adduced. I hope to have the pleasure of hearing that gentleman acknowledge, in the same spirit of honourable frankness, that after weighing and considering opinions, which he had thought solid and sound, he finds, on examination, that they were only specious and plausible. But, I insist, that it is the duty of those who propose any change, to shew that there exists a necessity for it; and when, for so long a course of time, the conduct of those in office has been unimpeachable, is there not a peculiar obligation on those who would abolish the office, to produce solid, obvious, substantial reasons, strong enough to strike the mind at the first view of them?

Some gentlemen wish to give the Executive more power. That seems in fact, the real inducement for proposing this measure. The real object in view is to assimilate the Executive of Virginia to that of the United States. I beg gentlemen seriously to reflect before they engage in such a design. We have seen the abortive attempt to shew any usurpation of authority, and let it be remembered, that it is not sufficient to say, the Executive may err. Have they ever attempted to usurp authority, or to abuse it? None can pretend it—yet we are called upon to imitate the Executive of the United States. Has that usurped nothing? The gentlemen are clamorous against the usurpations of the General Government. Yet they call upon us to imitate the unfortunate and mischievous example. Give your Executive similar powers, and you will have similar results. For my part, I consider the Executive of the United States as better suited to a monarchy than a republic. For God's sake, let us not imitate such an example as that. It is the very last in all our republics, that I should be dis-

posed to follow. Infinitely better would it be for the security of the liberties of the American people, if the framers of the Constitution of the United States had followed our example, in framing the Executive Department of the General Government. Its original patronage was too great, but that has become ten times greater now, and it will hereafter be ten times greater than it is at present. It is constantly accumulating, and it will become the same swelled and overgrown monster which has swallowed up all other free governments. Gentlemen will do well to reflect upon the irresistible influence of a vast mass of accumulative power in any single hand whatever. The great practical question of the Federal Government is, who shall be President, and how shall he distribute his vast patronage. Legislation is lost sight of: The very evils of the dreadful tariff itself, were not brought upon us from any consideration of the real merits of the tariff question, but the calculation was, who should get the most votes for their favourite President by voting for the unprincipled tariff—"that act of abominations." The parties threatened one another with losing their respective candidates for President. "You will lose your President if you vote against this abominable bill," was the threat on both sides. The questions—is it right? is it moral? are its principles just? were all disregarded. The Legislature was corrupt to its root. That one consideration of carrying their own candidate, had more effect upon their proceedings than all others put together. The great cause was to be found in the patronage of the President. Take the same thing on a smaller scale. Take the case of Pennsylvania: Though Jackson's interest was powerful there, there were some lurking interests of the opposite party. They found that Adams was down, so they started an anti-masonic candidate. Electioneering ran high: at length the true Jacksonians succeeded, and there were two hundred and eighty of true Jacksonians, applicants for office from Philadelphia in the course of a week. Was this nothing? Does not this example incontestibly prove that the patronage of the Executive, according to its extent, will have the same corrupting influence, whether in the General or State Governments? But one gentleman told us, "we are too calm in Virginia. We want some of this agitation to circulate the blood through the body politic." Sir, is this the kind of agitation gentlemen want? do they want to see among us a party government, corrupt to its very core? Their motives, I have no doubt are as pure as can be, while they are urging us to abandon a system from which we have derived every blessing we possess. Do they not see the awful responsibility they would have us assume? Do they remember, that what they would change involves the best interests of our State. Can they avoid recollecting what must be their own fate, and what must be their personal interest in the consequence? Does it not behove us to be careful, and positively sure that we are doing right, before we alter what is now good? What will our constituents say if we fail? If the new Constitution shall not improve the sound and healthful provisions of the old? If, instead of soundness and health they introduce political disease? Will not the people accuse us of being political quacks, instead of grave and wise statesmen? Has not the gentleman some terror, lest after he has carried his point, he shall be condemned by the judgment of posterity? Before we tear down our political edifice to please these gentlemen, let us at least understand what we are to have in its place. Have gentlemen settled it in their mind that they will make no sacrifices of opinion? Sir, we had some little experience in the Executive Committee. Gentlemen found it hard to tell what their Lieutenant-Governor was to do, or how that duty was to be performed which the Council are doing every day with facility. Yet they call upon us to tear down this Executive, and they alarm our fears by threatening us with another borrowed from the United States.

Sir, when I rose I meant only to state facts which I conceived to have an important bearing upon the subject. These I wished to state with perfect coolness, and in the clearest manner, and then to submit a few observations which naturally grew out of them. I have been insensibly drawn farther than I intended. I know the impatience of gentlemen in listening to a set speech, and God knows I was far enough from intending to make any thing that could bear that name. I will not farther trespass upon the patience of the House.

(No. 3.)

*A brief sketch of MR. GILES's Remarks on the Judiciary, (Dec. 29.)
Referred to in page 766.*

MR. GILES said, that he perceived, and participated in, the impatience of the House, and nothing could induce him to meet it, but an imperious sense of duty. He hoped to be excused for offering a few remarks, which he would endeavour to render as short as possible. He had had the misfortune the other day, to differ from the venerable gentleman from Richmond, (C. J. Marshall,) on points which he conceived to be of the first impression. That gentleman, unless he had misunderstood him, conceived that all the Judges of the State held their offices during life.

[Mr. Marshall here interposed. The gentleman had entirely misunderstood him, if he had supposed him either to say or to think the commission of the Judges was a commission during life, and that a breach of good behaviour did not terminate it. Their commission did extend for life, if their good behaviour should continue so long, but not otherwise.]

Mr. Giles resumed. So he had understood the gentleman. He had supposed him to mean, that Judges held their offices for life, on one single condition, to wit, unless forfeited by misbehaviour. But, his own doctrine was, that a Judge held his office only during the continuance of that office, and his good behaviour therein. Abolish the court, and there was nothing left for the Judge to hold. There was then no office in existence in fact. To say that a Judge continued to hold his office after the court to which he belonged was abolished, was analogous to declaring, that he should enjoy his life after death. A respect for the feelings and opinions of honourable gentlemen, would not permit him to call such a position an absurdity, or a contradiction in terms, but it contained an incompatibility, such as he could not reconcile. When he had the other day returned from this Hall to his Chamber, he found there the commission of a Judge, waiting for authentication, and he had taken the trouble to make a copy of it, which he would now read.

Here Mr. Giles read the commission of a Judge.

What, asked Mr. G., does this commission authorise the Judge to enjoy? His office. In what court? In "the General Court." Abolish the General Court, and where is the office of the Judge? His office is merely an adjunct of the court; yet gentlemen say, when the court is destroyed, the office remains. I repeat it, that this sounds to me like saying a man may enjoy his life after death, or at least that one hand is left for the purpose of receiving, after the body to which it is attached is deprived of every vital function. Do gentlemen see any thing here about the Judge holding his office during life? No—nothing like it. This commission gives him an office in a particular court. Upon the non-existence of that court, that office ceases to exist of course. Could any thing be more absurd, than to commission a Judge, to hold his office during good behaviour, without the designation of any court to which it is attached, thus leaving him to be Judge of any court, or all courts? Was there ever any such case in existence, or is there any such now? But it had been said, that a Judge commissioned in the General Court, nevertheless performed District Court service, and that there is nothing in mere name. I say, that there is a great deal in a name, when that name properly defines a substance—and in a case of the District Courts, the Judges of the General Court had merely changed their plan of operation. If the General Court were abolished, could the Judges continue to perform duty either there, or in the District Courts, or any where else? Certainly not.

Mr. G. said, that he objected to the amendment of the gentleman from Spottsylvania, (Mr. Stanard,) because it embodied a mass of complex ideas, in order to get rid of a contradiction. It amounted to a sophism, and went to destroy that simplicity which should always characterize an organic law. He might possibly be in favour of such an amendment, if the original clause must stand, but he hoped the House would get rid of both the clause and the amendment.

I ask the gentleman from Richmond to consider, if after prescribing this provision in his Conventional character, he should then be transferred to the Legislature to carry it into effect, how he would act? I ask him what those duties are which remain for a Judge to perform after his court has been destroyed? There are no duties; and how then can any be assigned? There is an attempt too to make this imperative; that is the evident design, though I own that the words will bear a construction that leaves this optional with the Legislature. What sort of Judge is to perform these duties? There is no description given, and the inference is, that Judges of all sorts, competent and incompetent, as soon as they are thrown out of office, by the abolition of their court, must have judicial duties assigned to them. Is it not strange that the Legislature should be called upon; should be almost commanded to assign duties to an incom-

petent Judge? Yet here is no exception, no saving clause. Gentlemen tell us the difficulty may be avoided by the provisions of the eighth section, and I acknowledge that the two ought to be taken together: but here is a provision that must stand unless according to the eighth section, two-thirds of both Houses shall consent to turn out the Judge. We have Judges now that are incompetent, yet the Legislature is bound to assign them duties.

I am as much in favor of the complete independence of the Judiciary as the warmest advocate of that principle, but I am in favor of its responsibility also: I hold these two things not to be incompatible. I would make all the Judges responsible, not to God and their own conscience only, but to a human tribunal. I hold in my hand a history of the independence of the Judges in England: I will not weary the Convention by reading it, but will briefly state its substance. Judges in England were anciently the Commissioners of the King. The Executive and the Judicial offices were united, and the Judges were at first appointed during pleasure. In the time of Queen Anne, their compensation was fixed by law, but they were all removed from office by the demise of the Crown. In the first year of George the 3d, the statute was passed which conferred upon them complete and absolute independence. The tenure of their office was placed upon good behaviour, and their salary was fixed. But what do we understand by the independence of the Judges in this country? We too place the tenure of their office upon good behaviour, but we add another and a very important provision; for, we say that their salary shall not be diminished during their continuance in office. Here is a vast security to which the English Judges are strangers; and yet the English Judges are deemed completely independent—why then not ours under more favorable circumstances? With their support, Parliament can do what it pleases; but we have gone one point farther, in making them really and fully independent. And what I ask is the independence of a Judge? It is neither more nor less than this: that when he pronounces judgment, he shall do it with the certainty that he can neither gain nor lose by his decision. If you take away your requirement of two-thirds of the Legislature, and put it in the power of a bare majority to turn them out of office, you still leave them on as good a footing and better, than they have in England. But here you first clog the Legislature in its action upon them by requiring two-thirds of the whole number of members elected; you then give the Judge to be removed a citation of twenty days, and allow full scope to all the chicanery which can be brought to bear by himself and his friends to prevent his removal. These exceptions to the ordinary course of legislation, go beyond independence; they now deserve another name: they amount to favoritism. You establish what I did once call a privileged order; but I will recall the term, out of respect to the feelings of gentlemen, since it is considered by some as offensive. But certainly these are so many exceptions, and what are exceptions but privileges? Sir, I hope the clause will be stricken out: the eighth resolution provides an incompetent remedy: the gentlemen themselves own this, and say that that resolution may be amended; but it is not yet amended, and suppose it should not be, there will then be no proper provision to impose on the Judiciary a due responsibility. Gentlemen are making a great effort of the human mind to avoid a danger which has never occurred but in the single instance of Kentucky; that of the abolition of a court for the purpose of getting rid of the Judges. I disapprove of any such expedient, but it arose from this very restriction which gentlemen are so anxious to impose upon the Legislative power. The Legislature of Kentucky was placed in just that condition, that a majority could be obtained to turn out the Judges, but not three-fifths of the Assembly. The Governor happened to concur with a majority of the Legislature: If a simple majority possessed the power to displace, the difficulty would not have occurred. But, they found that three-fifths were required by the Constitution, and they resorted to the other expedient, because it was necessary to the object they had in view: yet we are about to establish the very same principle, against all the requirements of fair and rational responsibility. Responsibility is the characteristic principle of your Government throughout; and why should there not be such a thing as Judicial responsibility? Your eighth resolution says there shall be such a thing, but you clog it with provisions which make it *felo de se*. It is like an obligation with a defeasance written in the face of it: You enforce the principles of responsibility in two of the departments of your Government with great anxiety, and completely abandon it in the other part of it. I am in favor of carrying the principle throughout.

CORRECTIONS.

- Page 272—In the report of Mr. Johnson's speech, reference is made to an explanation by Mr. P. P. Barbour. The words of that explanation, more accurately stated, are as follow :
" Mr. Barbour explained, when he referred to the Roman Comitia, as formed by centuries and tribes : It was for the purpose of shewing that each was in the extreme, and that neither by itself ought to be adopted ; that the Comitia by centuries were organized, so that property alone prevailed over numbers ; and the Comitia by tribes, so that numbers alone prevailed over property. This difference in the mode of organization produced conflict between them, so as to array them in hostility against each other. He went neither for the representation of property or persons alone, but for one founded upon them both, so as to produce not conflict, but harmony between them : the effect of the amendment of the gentleman from Culpeper, would be the attainment of this object."
- Page 357—Line 16, in Mr. Henderson's speech on the Right of Suffrage, for " Horn," read " him."
- Page 441—Judge Coalter, in speaking of incurring a debt for purposes of Internal Improvement, said, that he thought " such debt ought to be created, whenever there is a well-founded belief, that the improvement will yield a profit equal, or nearly equal, to the interest of the money expended. He said, that he was a friend to Internal Improvement ; but, as all national debts, whether to carry on war, for purposes of Internal Improvement, or any other great scheme, are to be a lien on the lands of the country, which are immovable, and are not so on chattels, which can be removed at pleasure, those whose real estates are to be thus permanently mortgaged, ought exclusively to judge of the expediency of creating such incumbrance."
- Page 471—Line 14, in Mr. Henderson's speech on the election of Governor by the people, for " complete," read " complex."
Line 16, for " required," read " acquired."
Line 46, for " prostrate," read " protract."
Line 49, for " with," read " not."
Line 52, for Few," read " Two."
- Page 472—Line 27, for " true," read " here."
- Page 473—Line 11, for " this," read " the."
Line 24, for " soberminded men," read " sobermindedness "
- Page 702—In Mr. Upshur's speech, first paragraph, 3d line, between " were" and " met," insert " not."
- Page 703—9th line, for " exceptionable," read " unacceptable."
31st line, for " This object," read " His object."
46th line, for " one number," read " our number."
4th line from the foot, for " every other basis," read " any other," &c.

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